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Part V

Department of Defense

Office of the Secretary

Defense Acquisition Regulations

DEPARTMENT OF DEFENSE

32 CFR Parts 1-39

[DAC 76-25]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-25. The changes consist of revisions to Section VI, Foreign Acquisitions, and related changes to other parts of the Regulation which resulted from the revisions to Section VI.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3D 1028, Pentagon, Washington, D.C. 20301, Telephone 202-697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations. The July 1, 1979 revision, as supplemented on July 1, 1980, is the most recent edition of that title. It reflects amendments to the 1976 edition made by Circulars 76-1 through 76-23.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the Regulation would be published in the **Federal Register.**

Defense Acquisition Circular 76-25.

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-25, issued October 31, 1980. The following is a summary of the amendments:

Foreign Acquisitions. The Department of Defense and several nations, particularly NATO countries, have concluded a number of agreements that anticipate the forbearance of U.S. "buy-national" laws or regulations in the acquisition of defense equipment from those nations. These agreements are classified in one of three categories: a reciprocal arrangement, an arrangement pursuant to a foreign military sale, or an arrangement pursuant to a treaty or other international agreement. Two fundamental characteristics of these agreements with respect to acquisition are (i) the waiver of the Buy American Act and "buy-national" regulations by the Department of Defense, and (ii) the promise to solicit for products from these countries. This DAC implements these agreements and provides the procedures for the solicitation and evaluation of offers of end products or components from countries which have a memorandum of understanding with the United States, an FMS/offset arrangement negotiated pursuant to a, foreign military sale, or a defense cooperation agreement. As a result of these agreements, there are three categories of products: (i) domestic products as newly defined; (ii) products from selected foreign countries granted special status (with certain exceptions) whereby they are treated as if they are domestic products, hereafter referred to as "qualifying" products; and (iii) products from all other foreign countries, hereafter referred to as "nonqualifying" products. Implementation of these agreements required additions and revisions to Section VI and to other portions of the DAR to clarify the distinctions between these three categories of products. Solicitation and evaluation procedures have been revised and appropriate clauses have been added or revised. The major changes are outlined below:

Paragraph 6-001 includes an expanded definition of "domestic end product," as well as definitions of new terms.

In view of the policy for broadening opportunities to supply DoD needs with qualifying country end products, the conditions of the Buy American Act and the Balance of Payments Program must be foreseen in the majority of solicitations. To reduce the complexity, a single clause has been developed to encompass both conditions.

The exceptions for specialty metals and chemical protective warfare clothing have been redrafted to reflect the DoD policy.

Paragraph 6-602 has been revised to state explicitly what is implied in 7-104.31(b): a contractor must reduce its price in order to receive a duty-free entry certificate if the award was based on the contractor's representation that it would be furnishing a domestic end product or component. A new paragraph has been added, stating the requirement for insertion of the duty-free entry clause for qualifying country end products and components.

Part 8 of Section VI, concerning application of the Balance of Payments Program to acquisitions for use overseas, has been modified to waive the "buy-national" restriction with respect to "qualifying countries." Balance of Payment procedures have been simplified by elimination of presolicitation evaluations. The exceptions to the Balance of Payments Program procedures listed in 6-803.2 have been revised. Another significant change in Part 8 is the raising of the dollar thresholds for Secretarial Determination and Findings (D&Fs) required for perishable subsistence purchases, nonavailability determinations, and unreasonable cost determinations to $2 million, and permitting further redelegation below the threshold of $500,000. Likewise, the dollar thresholds for 6-803.2(d)(1) and (2) have been raised for Secretarial D&Fs dealing with the acquisition of scientific and technical knowledge.

The most significant addition in Part 13 deals with the implementation of the FMS/offset arrangement agreements at 6-1310. This material directs that the solicitation and evaluation of FMS/offset arrangement country offers be done generally in the same manner as for NATO participating country offers (Part 14). Also, a sample format has been provided for processing the D&Fs necessary to waive the Buy American Act on a case-by-case basis. FMS/offset arrangement agreements are reprinted at 6-1315 for information purposes.

Part 14 sets forth in detail the solicitation procedures and the evaluation procedures to be used for qualifying country offers. Part 14 contains the list of items restricted from qualifying country offers. Each memorandum of understanding which has an effective Secretarial D&F waiving the application of the Buy American Act is reprinted in 6-1406 for information. The D&Fs are not reprinted.

For those agreements with countries which are neither members of NATO nor part of an FMS/offset arrangement, Part 15 implements "defense cooperation agreements."

Special limitations on sales commissions and contingent fees for certain FMS customers are included in new paragraphs 6-1305.6 and 7-104.107.

In summary:

6-104.5 and 6-803.1(e) specify clauses and conditions to be included in solicitations and contracts.

The former procedures in 6-103.5 on Canadian Supplies are deleted in their entirety.

Reference to purchase from Panama in Part 2 are deleted as the result of the Panama Canal Treaty of 1977 (but see 6-803.2(iv)) for purchases by and for the use of U.S. Forces in Panama.

There are four clauses which have been modified or added to the DAR:

7-104.3, Buy American Act and Balance of Payments Program, has been revised to combine the requirements of both the Buy American Act and the Balance of Payments Program.

7-104.32, Duty-Free Entry of Qualifying Country Supplies, is based on the former Duty-Free Entry for Canadian Supplies clause which has been redrafted to implement the waiver agreements with all qualifying countries.

7-104.105, Offset Arrangement, has been relocated from 6-1310 to Section VII.

7-104.106, Qualifying Country Sources as Subcontractors, required by 6-104.5 and 6-1403.3, puts contractors on notice that a qualifying country source is equally eligible for a subcontract as a domestic subcontractor and that qualifying country sources should not be discriminated against.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533(a) and (d). The amendments became effective on October 31, 1980.

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76-25. The number at the top of each page (for example, 1:15) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the July 1, 1979 edition of the Defense Acquisition Regulation contained in 32 CFR Parts 1-39, Volumes I, II, and III, as supplemented on July 1, 1980, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table:

DAR paragraph	Replacement pages
Volume I	
1-201.12	1:16.
1-706.1	1:142-A.
1-803	1:154.
1-804.1	1:154.
1-904.3	1:161.
1-1101	1:178.
1-1103	1:178.
1-1104	1:179.
1-1105	1:179.
1-1107	1:179.
1-1107.1	1:179.
1-1403	1:193.
1-2207.1	1:223.
1-2207.2	1:223, 1:224.
2-201	2:7, 2:8, 2:11, 2:14, 2:17.
2-202.1	2:18.
2-202.4	2:18.
2-203.1	2:19-A.
2-205.6	2:22.
2-207	2:22.
2-407.6	2:39.
3-501	3:64-A, 3:65, 3:66-B, 3:68-A, 3:70.
3-503.1	3:71.
3-503.2	3:71.
3-504.1	3:71.
3-504.2	3:71.
3-603.1	3:78, 3:78-A.
3-608.2	3:91.
Section VI, Table of Contents.	1 through 6.
6-000	6:1.
6-001	6:1.
6-001.1	6:1, 6:2.
6-001.2	6:2.
6-001.3	6:2.
6-001.4	6:2.
6-001.5	6:2, 6:3.
6-001.6	6:3.
6-001.7	6:3.
6-100	6:4.
6-101	6:4.
6-102	6:4.
6-102.1	6:4.
6-102.2	6:4.
6-102.3	6:4, 6:5.
6-103	6:5.
6-103.1	6:5.
6-103.2	6:5, 6:6.
6-103.3	6:6.
6-103.5	6:6.
6-103.6	6:6.
6-104	6:6.
6-104.1	6:6.
6-104.2	6:6, 6:7.
6-104.3	6:7.
6-104.4	6:7 through 6:9, 6:10.
6-104.5	6:10.
6-104.6	6:10.
6-105	6:10, 6:11.
6-106	6:13.
6-200	6:14.
6-300	6:15.
6-303	6:16.
6-304.1	6:16.
6-304.2	6:17.
6-308	6:20.
6-401	6:21.
6-402	6:21.
6-501	6:22.
6-502	6:22, 6:23.
6-503	6:23.
6-504.1	6:23, 6:24.
6-504.2	6:24.
6-504.4	6:25.
6-504.5	6:25.
6-505	6:25.
6-601	6:26.
6-602	6:26.
6-603.1	6:26.
6-603.2	6:27, 6:28.
6-603.3	6:28.
6-603.4	6:28, 6:29.
6-604	6:30.
6-605	6:30.
6-702	6:31.
6-703.2	6:31.
6-703.3	6:31, 6:32.
6-703.4	6:32.
6-704.1	6:32.
6-705 (deleted)	6:32.
6-800	6:33.
6-801	6:33.
6-802	6:33.
6-803	6:33.
6-803.1	6:33, 6:34, 6:35.
6-803.2	6:35 through 6:38, 6:39.
6-804	6:39.
6-901	6:40.
6-902	6:40.
6-903	6:40.
6-1003	6:41.
6-1102	6:43.
6-1103	6:43.
6-1106.3	6:46, 6:47.
6-1108	6:48.
6-1109	6:48.
6-1900	6:50.
6-1901.1	6:50.
6-1901.2	6:50, 6:51.
6-1302	6:51.
6-1303.1	6:51.
6-1303.2	6:51.
6-1304	6:51.
6-1304.1	6:51, 6:52.
6-1904.3	6:52, 6:53.
6-1305.1	6:53.
6-1305.3	6:54.
6-1305.4	6:55.
6-1305.5	6:56.
6-1305.6	6:56.
6-1306.1	6:56.
6-1306.2	6:56.
6-1306.3	6:57.
6-1307	6:57.
6-1308	6:57.
6-1310	6:57.
6-1310.1	6:57, 6:58.
6-1310.2	6:58.
6-1310.3	6:58 through 6:60, 6:61.
6-1312	6:61.
6-1313	6:61.
6-1314	6:61.
6-1315	6:61.
6-1315.1	6:61, 6:62, 6:63.
6-1315.2	6:63, 6:64, 6:65.
6-1316	6:65.
6-1400	6:66.
6-1401	6:66.
6-1402	6:66.
6-1403	6:66.
6-1403.1	6:66 through 6:68, 6:69.
6-1403.2	6:69.
6-1403.3	6:69.
6-1403.4	6:69.
6-1404	6:69.
6-1405	6:69 through 6:72, 6:73.
6-1406	6:73.
6-1406.1	6:73 through 6:80, 6:81.
6-1406.2	6:81 through 6:93.
6-1406.3	6:94 through 6:101, 6:102.
6-1406.4	6:102 through 6:112, 6:113.
6-1406.5	6:113 through 6:117, 6:118.
6-1406.6	6:118 through 6:124.
6-1406.7	6:125 through 6:135, 6:136.
6-1406.8	6:136 through 6:142.
6-1406.9	6:143 through 6:147, 6:148.
6-1407	6:148.
6-1500	6:149.
6-1501	6:149.
6-1502	6:149.
6-1502.1	6:149.
6-1502.2	6:149.
6-1502.3	6:149.
6-1502.4	6:149, 6:150.
6-1503	6:150.
6-1504	6:150.
6-1504.1	6:150 through 6:154.
Volume II	
7-103.15	7:17.
7-104.3	7:32 through 7:32-B.
7-104.13	7:52.
7-104.32	7:75, 7:76, 7:76-A.
7-104.58	7:112.
7-104.93	7:137, 7:138.
7-104.103	7:140-D.
7-104.104	7:140-D.
7-104.105	7:140-E, 7:140-F.
7-104.106	7:140-F.
7-104.107	7:140-F, 7:140-G.
7-204.16	7:194.
7-204.23	7:197.
7-204.68	7:205.
7-204.69	7:205.
7-303.9	7:236.
7-303.19	7:236.
7-303.70	7:241.
7-403.18	7:261.
7-403.66	7:266.
7-504.20	7:271.
7-602.24	7:286.
7-603.44	7:310-A.
7-606.19	7:332.
7-608.4	7:341.
7-705.12	7:367.
7-902.47	7:391.
7-1102.4	7:407.

DAR paragraph	Replacement pages
7-1102.5	7:407.
7-1702.23	7:439.
7-1903.59	7:456.
7-1910.14	7:463.
7-2003.47	7:515 through 7:516-A.
7-2003.52	7:517.
7-2003.53	7:518.
7-2003.75	7:526-A.
8-216	8:22.
8-217	8:22.
10-201.1	10:13, 10:14.
10-201.2	10:14.
12-302	12:16.
12-803	12:28.
12-1302	12:47.
12-1402	12:49.
	Volume III
18-702.2	18:35.
18-703.2	18:35.
20-503	20:27.
20-505.1	20:27.
F-200.1501-1	F235.
F-200.1507	F236.
F-200.1513	F237 through F239.
Appendix N	N:116.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

July 8, 1981.

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GENERAL PROVISIONS

Part 2—Definition of Terms

1-201 Definitions. As used throughout this Regulation, the words and terms defined in this paragraph 1-201 shall have the meanings set forth below, unless (i) the context in which they are used clearly requires a different meaning, or (ii) a different definition is prescribed for a particular Section or portion thereof.

1-201.1 *Change Order* means a written order signed by the contracting officer, directing the contractor to make changes which the Changes clause of the contract authorizes the contracting officer to order without the consent of the contractor (see 16-103).

1-201.2 *Contract Modification* means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes (i) bilateral actions such as supplemental agreements, and (ii) unilateral actions such as change orders, orders for provisioned items, administrative changes, notices of termination, and notices of the exercise of a contract option.

1-201.3 *Contracting Officer* means any person who, either by virtue of his position or by appointment in accordance with procedures prescribed by this Regulation, is currently a contracting officer (see 1-400) with the authority to enter into and administer contracts and make determinations and findings with respect thereto, or with any part of such authority. The term also includes the authorized representative of the contracting officer acting within the limits of his authority. NOTE: Recent assignments of contract administration responsibilities have necessitated a separation of duties related to procurement, with some duties normally performed at a purchasing office and some normally performed at a contract administration office. For convenience of expression, when requiring performance of specific duties by a contracting officer, this Regulation may refer to a contracting officer at the purchasing office as the procuring contracting officer (PCO), and to a contracting officer at a contract administration office as an administrative contracting officer (ACO). Additionally, a contracting officer, responsible for the settlement of terminated contracts, may be referred to as the termination contracting officer (TCO). It is recognized that a single contracting officer may be responsible for duties in any or all of these areas, and reference in this Regulation to PCO, ACO, or TCO does not of itself require that duty be performed at a particular office or activity or restrict in any way a contracting officer in the performance of any duty properly assigned. For example, a duty specified by this Regulation to be performed by the ACO will be performed by a contracting officer at the purchasing office when contract administration or responsibility for that duty has been retained in the purchasing office in accordance with 20-703.3.

1-201.4 *Contracts* means all types of agreements and orders for the procurement of supplies or services. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders, or task letters thereunder; letter contracts, and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

GENERAL PROVISIONS

1-201.5 *Department or Military Department* includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the Defense Mapping Agency, and the National Security Agency.

1-201.6 *Department of Defense* comprises the Office of the Secretary of Defense and the Military Departments.

1-201.7 *Head of Procuring Activity* includes the chief, commander, or other official in charge of a Procuring Activity.

1-201.8 *Includes* means "includes but is not limited to"

1-201.9 *Labor Surplus Area Concern.* See 1-801.1.

1-201.10 *May* is permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

1-201.11 *Negotiate and Negotiation*, when applied to the making of purchases and contracts, refer to making purchases and contracts without formal advertising.

1-201.12 *Possession* in a geographic sense includes the Virgin Islands, the Swan Islands, Guantanamo Bay, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the guano islands but does not include Puerto Rico, leased bases, or trust territories.

1-201.13 *Procurement* includes purchasing, renting, leasing, or otherwise obtaining supplies or services. It also includes all functions that pertain to the obtaining of supplies and services, including description (but not determination) of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

1-201.14 *Procuring Activity* includes:

FOR THE ARMY:

Office of the Deputy for Materiel Acquisition, Assistant Secretary of the Army (Installations and Logistics);

Directorate of Procurement & Production, Headquarters, U. S. Army Materiel Development and Readiness Command;

U. S. Army Armament Materiel Readiness Command;
U. S. Army Armament Research and Development Command;
U. S. Army Missile Command;

U. S. Army Communications Research and Development Command;
U. S. Army Electronics Research and Development Command;
U. S. Army Communications and Electronics Materiel Readiness Command;
U. S. Army Troop Support Agency;
U. S. Army Troop Support and Aviation Materiel Readiness Command;
U. S. Army Tank-Automotive Materiel Readiness Command;
U. S. Army Tank-Automotive Research and Development Command;
U. S. Army Aviation Research and Development Command;
U. S. Army Training and Doctrine Command;
U. S. Army Test and Evaluation Command;
U. S. Army Forces Command;
U. S. Army Health Services Command;

(vii) a class set-aside of the time or service concerned has been made at some other contracting activity; or

(viii) the item will be described by "brand name or equal"

(k) Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

(L) See 6-1403.1(a)(2) regarding purchases from qualifying country sources (see 6-001) where small business set-asides are involved.

1-706.2 *Contract Authority.* Contracts for total (including) combined small business/LSA) or partial set-asides entered into by conventional negotiation (see 1-706.5(b) and 1-706.6(d) or by "Small Business Restricted Advertising" (see 1-706.5(b)) are negotiated acquisitions and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination (see 3-201.2(b)(ii) or 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

1-706.3 *Review, Withdrawal, or Modification of Set-Asides or Set-Aside Proposals.*

(a) Prior to issuing solicitations each individual acquisition governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that acquisition of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist and the SBA representative, if available, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual acquisitions.

(b) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set aside the contracting officer shall promptly either:

(i) concur in the recommendation, or

(ii) disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of 1-706.3(h).

(d) All cases involving the noninitiation of a set aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of 1-706.3(e).

(e) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual acquisition (1-706.1(h)) or class of acquisitions or a portion thereof (1-706.1(i)), he shall notify the SBA representative, in writing, within 5 working days. If the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint or unilateral set-aside determination, the SBA representative shall be allowed 2 working days to appeal, in writing, to the chief of the contracting office for decision. The chief of the contracting office shall be allowed 7 working days to provide the SBA representative his decision, in writing, whether or not the acquisition will be set aside. Within 1 working day after receipt of a decision approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend contracting action pending a further appeal by the Administrator of SBA to the Secretary of the Department concerned. The SBA shall be allowed 15 working days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken. When an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the 15-day period, the matter shall be forwarded, with full justification of the action taken, through normal channels, including the appropriate departmental Small Business Advisor as identified in 1-704.2, to the Secretary of the Department concerned.

Example B. DEF Company, manufacturing in a surplus area bids on a contract at $1,000. DEF Company will incur the following costs:

Direct labor $200
Overhead 200
Purchase of materials from UVW Company, which is located in a labor surplus area but which merely distributes the materials from stocks on hand (the materials having been manufactured by UVW's supplier) 550

DEF Company does not qualify as a labor surplus area concern since its manufacturing and production costs do not exceed 50% of the contract price regardless of whether UVW's supplier manufactures in a labor surplus area.

1-801.2 *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Department of Labor and listed as such by that Department in its publication "Listing of Eligible Labor Surplus Areas Under DMP No. 4A and Executive Order 10582".

1-801.3 *Small Business Concern.* See 1-701.

1-802 General Policy. Except as provided in 1-806 with respect to depressed industries, it is the policy of the Department of Defense to aid labor surplus areas (LSA) by placing contracts with LSA concerns, to the extent consistent with procurement objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with LSA concerns. In carrying out this policy, and to accommodate the small business policies of Section I, Part 7, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns, and (iii) small business concerns which are not LSA concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of Procuring Activities and chiefs of purchasing and contract administration offices are responsible for the effective implementation of the Labor Surplus Area Program within their respective offices. Responsibility for administration of the program may be assigned to small business specialists appointed pursuant to 1-704.3.

(The next page is: 1:154)

1-803 Application of Policy.

(a) Within the policy set forth in 1-802, the following shall be applied to contracts which are estimated to exceed $10,000:

(i) negotiated contracts shall, where acquisition objectives permit, be awarded to labor surplus area concerns; *provided*, that in no case shall price differentials be paid for the purpose of carrying out this policy;

(ii) when appropriate, acquisitions shall be made from LSA concerns by partial set-aside procedures, in accordance with 1-706.7 or 1-804 (but no total set-aside shall be made for LSA concerns) and such set-asides shall be given preference over any small business set-aside;

(iii) each Department shall assure that information identifying LSA is disseminated promptly to contracting personnel;

(iv) when less than a complete bidders list is to be used pursuant to 2-205.4, at least a pro rata number of prospective LSA concerns shall be solicited;

(v) subcontracting with concerns in LSA shall be encouraged in accordance with 1-805;

(vi) See 6-1403.1(a)(2) regarding purchases from qualifying country sources (see 6-001) where LSA set-asides are involved.

(b) Records of the total value of all contracts in excess of $10,000 placed with LSA concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described in 1-110 and Section XXI, Part 1. Accordingly, each Department, in soliciting bids and proposals for any contract estimated to exceed $10,000 shall request from any offeror, or other source, any information needed to determine whether the offeror is a LSA concern. Contract files shall be documented to indicate the extent to which LSA concerns were considered and the action taken with respect thereto.

1-804 Partial Set-Asides for Labor Surplus Area Concerns.

1-804.1 *General.*

(a)(1) In accordance with the policy set forth in 1-802 and 1-803 (see also 1-706.7), a portion of each acquisition shall be set aside for LSA concerns if:

(i) the acquisition is severable into two or more economic production runs or reasonable lots; and

(ii) one or more LSA concerns are expected to qualify as LSA concerns and to have the capability to furnish a severable portion of the acquisition at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that offers will be received from only two concerns with capability (one concern which will not qualify as a LSA concern and one concern which will qualify as a LSA concern) unless authorized by the Head of the Contracting Activity on a case-by-case basis. Before reaching this con-

1-903.4 *Ability to Meet Certain Minimum Standards.* Except to the extent that a prospective contractor proposes to perform the contract by subcontracting (see 1-906), acceptable evidence of his "ability to obtain" such things as resources, equipment, facilities, and personnel (see 1-903.1(i) and 1-903.2) shall normally be a commitment or explicit arrangement, which will be in existence at the time the contract is to be awarded, for the rental, purchase or other acquisition of such resources, equipment, facilities, or personnel.

1-904 Determinations of Responsibility and Nonresponsibility.

1-904.1 *Requirement.* No purchase shall be made from, and no contract shall be awarded to, any person or firm unless the contracting officer first makes an affirmative determination that the prospective contractor is responsible within the meaning of 1-902. The signing of the contract by the contracting officer constitutes such a determination; therefore, he must assure himself that the applicable requirements of 1-903 are met before signing the contract or order. When a certificate of competency has been issued, the factors covered by the certificate of competency may be accepted by the contracting officer without further inquiry. When a bid or offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, a determination of nonresponsibility shall be made, signed, and placed in the file. The determination of nonresponsibility shall set forth the basis of the determination. In making a determination of responsibility or nonresponsibility for purchase or contract awards of $100,000 and over, performance data should be acquired and considered when the contracting officer deems it necessary. Supporting documents or reports, including any pre-award survey reports (see 1-905.4) and SBA certificate of competency (see 1-705.4), shall be included in the contract file.

1-904.2 *Affiliated Concerns.*

(a) Affiliated concerns (see 2-201(a)B(ii) and (b)(xvii) shall be considered as separate entities in determining whether the one of them which is to perform the contract meets the applicable standards for a responsible prospective contractor (but see 1-701.1 with respect to status as a small business concern).

(b) Notwithstanding the above, the record of performance and integrity of affiliated concern which may adversely affect the responsibility of the prospective contractor shall be considered by the contracting officer when making a determination of responsibility.

1-904.3 *Acquisitions From Concerns in Qualifying Countries.* Awards to concerns in qualifying countries are subject to this Part 9 (see 6-1403.1(b)). A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of 1-906 as the basis for his determination under 1-904.1. In cases where the firm proposed by CCC is so accepted, pre-award survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, he shall request from CCC and any other sources whatever additional information or plant surveys he may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the pre-award survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

1-905 Procedures for Determining Responsibility of Prospective Contractors.

1-905.1 *General.*

(a) Before making a determination of responsibility (see 1-904), the contracting officer shall have in his possession or obtain information sufficient to satisfy himself that a prospective contractor currently meets the minimum standards set forth in 1-903, to the extent that such standards are applicable to a specific procurement.

(b) Maximum practicable use shall be made of currently valid information on file or within the knowledge of personnel in the Department of Defense. Each Department, shall at such level and manner as it deems appropriate, maintain useful records and experience data for the guidance of contracting officers in the placement of new procurement, and shall inform its contracting officers and the other Departments of the means of access thereto. Notwithstanding this direction contract administration offices shall maintain files of information reflecting upon the ability of contractors to perform Government contracts successfully.

(c) Any purchasing office becoming aware of circumstances which, for any reason, casts doubt upon the ability of a contractor to perform contracts successfully, shall immediately advise the cognizant contract administration office. A contract administration office, upon being notified by a purchasing office of unfavorable information affecting a contractor under its cognizance, or upon developing unfavorable information during the course of contract administration activities, shall advise the purchasing offices of the other Departments. When a contract administration office is requested to perform a pre-award survey and it has been notified of the existence of unfavorable information relative to the contractor, it shall obtain the details including full supporting information. Careful and full consideration shall be given such information. If a contract administration office becomes aware of a prospective contract award to a contractor about whom unfavorable information exists and no pre-award survey has been requested, it shall (i) immediately notify the purchasing office concerned, and (ii) secure the details of such unfavorable information as if it were performing a pre-award survey and advise the purchasing office concerned. The purchasing office shall give full consideration to such advice in determining whether an award should be made.

(d) Generally, information necessary to make determinations of responsibility shall be obtained only concerning prospective contractors within range for an award.

1-905.2 *When Information Will Be Obtained.* Generally, information regarding the responsibility of a prospective contractor (including pre-award surveys (see 1-905.4) when deemed necessary) shall be obtained promptly after bid opening or receipt of proposals. However, in negotiated procurements, especially those involving research and development, such information may be obtained before the issuance of requests for proposals. Notwithstanding the foregoing, information regarding financial resources (see 1-903.1(i)) and performance capability (see 1-903.1 (ii)) shall be obtained on as current a basis as feasible with relation to the date of contract award.

1-905.3 *Sources of Information.* Information regarding the responsibility of prospective contractors shall be sought among the following sources:

(i) The Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (see 1-601).

(iii) Each release shall state that the estimate is based on the best information available at the time of publication, the information is subject to modification, is in no way binding on the Government, and that more specific information relating to any individual item or class of items will not be furnished until the proposed procurement is synopsized in the *Commerce Business Daily* (see 1-1003), or the solicitation issued.

(iv) Each release shall contain the name and address of the purchasing office which will process the procurement.

(v) Modifications to the original release shall be publicized as expeditiously as possible, in the same manner as the original.

(vi) Each proposed release shall be coordinated with small business, public information, and public relations personnel, as appropriate.

(vii) Each release shall contain, if applicable, a statement to the effect that small business or labor surplus area set-asides may be involved in some of the procurements, and that the determination of the applicability of these factors can be made only at the time that procurement action is initiated.

(viii) Each release shall contain the name or description of the item, and the estimated quantity to be purchased by calendar quarter, fiscal year, or other period. It may also contain such additional information as the number of units last purchased, the unit price, and the name of the last supplier.

1-1007.4 *Commerce Business Daily Announcements.*

(a) *General.* In addition to the publication of estimates as provided in 1-1007.3, further publication, where consistent with the needs of the individual case, shall be accomplished by announcements in the *Commerce Business Daily* reflecting the fact that long-range procurement estimates have been published and are obtainable, on request, from the issuing organization.

(b) *Preparation and Transmittal.* Activities publishing long-range procurement estimates shall, in accordance with (a) above, publicize them in the *Commerce Business Daily* by forwarding to the address listed in 1-1003.9(a) an announcement reflecting the fact that a long-range procurement estimate has been published and citing the address of the office from which a copy of the estimate can be obtained. Each announcement should be prepared substantially as the following example.

The Defense Personnel Support Center has published an estimate of equipment and footwear procurement requirements for ..... and ..... Quarters FY ..... These estimates, *which are subject to revision and are in no way binding on the Government*, may be obtained, by request, from the Defense Personnel Support Center (ATTN: Procurement and Production Directorate), 2800 South 20th Street, Philadelphia, Pennsylvania 19101.

1-1007.5 Classified Information shall be released through existing security channels in accordance with the DOD Industrial Security Regulation (DOD 5220.22R).

Part 11—Qualified Products

1-1101 General.

(a) It is sometimes necessary to test products in advance of any purchase action to determine if a product is available that will meet specification requirements. In such cases, the specification may require qualification of the product. Qualification is the entire process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, and then identified on a list of qualified products. Qualification is performed in advance and independent of any specific purchase action.

(b) A Qualified Products List (QPL) identifies the specification, manufacturer or distributor, item by part or model number or trade name, place of manufacture, and the test report involved. Suppliers whose products have successfully passed qualification and who furnish evidence thereof are eligible for award although not yet included on the QPL.

(c) Chapter IV of the Defense Standardization Manual 4120.3-M (formerly M200) is the basic instruction concerning qualified products and qualification procedures. Specifications which require a QPL are identified in the Department of Defense Index of Specifications and Standards. Copies of the Index and the Manual 4120.3-M may be purchased by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(d) Qualifying country sources (see 6-001) are not to be precluded from the opportunity to have their supplies listed on the Qualified Products List under 1-1105.

1-1102 Responsibility for Qualification. A Federal or Military specification is the only medium for establishing a requirement for qualification. The preparing activity identified in the specification is responsible for qualification.

1-1103 Justification for Inclusion of Qualification Requirements. Subject to approval by: in the case of the Army, the Army Materiel Command (AMCRD-EM); in the Navy, the Chief of Naval Material; in the Air Force, Directorate of Engineering and Maintenance (AF/LGYE), Departmental Standardization Office, USAF; in the Defense Logistics Agency, the Executive Director for Purchasing; in the National Security Agency, the Director of Procurement; in the Defense Communications Agency, the Director; in the Defense Nuclear Agency, Deputy Director, Operations and Administration; and in the Defense Mapping Agency, Staff Director of Logistics; a qualification requirement may be included in a specification when one or more of the following conditions exist.

(i) The time required to conduct one or more of the examinations and tests to determine compliance with all the technical requirements of the specification will exceed 30 days (720 hours). (Use of this justification should advance product acceptance by at least 30 days (720 hours).)

(ii) Quality conformance inspection would require special equipment not commonly available.

(iii) It covers life survival or emergency life saving equipment. (See 1-1902(b)(ii).)

1-1104 Availability of Lists. Qualified products lists are intended for the use of the Government and its contractors, subcontractors, prospective bidders, and suppliers. Lists may be obtained by prospective bidders or suppliers who require these lists in furnishing supplies or services to the Government or its contractors. Lists are also available to the public upon request. When a person is provided with, or given access to, a qualified products list he should be advised as follows:

(i) the list has been prepared for use by or for the Government in the acquisition of products covered by the specification and such listing of a product is not intended to and does not connote indorsement of the product by the Department of Defense;

(ii) all products listed have been qualified under the requirements for the product as specified in the latest effective issue of the applicable specification;

(iii) the list may be revised or amended as necessary, and subject to change without notice;

(iv) the listing of a product does not release the supplier from compliance with the specification requirements; and

(v) use of the information for advertising or publicity purposes is permitted, *provided* that such publicity or advertising does not state or imply that the product is the only product of that type so qualified or that the Department of Defense in any way recommends or endorses the manufacturer's product.

1-1105 Opportunity for Qualification. Upon determination that a product is to be covered by a qualified products list, manufacturers shall be urged to submit their products for qualification and where possible shall be given sufficient time to arrange for qualification testing prior to issuance of the initial invitation for bids or request for proposals for the item as a qualified product. Appropriate notice of such determination shall be furnished to the U.S. Department of Commerce, *Commerce Business Daily*, P.O. Box 5999, Chicago, Illinois 60680, requesting publication in the daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contracts Award". The publicity given to the requirement for qualification testing shall include the following:

(i) an intention to establish a qualified products list for a product,

(ii) the specification number and nomenclature of the product, and the name and address of the office to which the request for qualification should be submitted; and

(iii) notice that in making future awards consideration shall be given only to such products as have been accepted for inclusion in a qualified products list.

Lists shall always be kept open for inclusion of products from additional suppliers, including suppliers from qualifying country sources (see 6-001).

1-1106 Clarification of Qualification Requirements. When there is any question concerning qualification requirements in a specification, the activity that prepared the specification will furnish clarification when requested by the contracting activity.

1-1107 Acquisition of Qualified Products.

1-1107.1 *General.*

(a) Whenever qualified products are to be obtained by the Government as end items, only bids or proposals offering products which are qualified for listing on the applicable Qualified Products List at the time set for opening of bids or award of negotiated contracts shall be considered in making awards.

(b) Whenever a qualified product is to be obtained by a prime contractor as a component of an end item, the prime contractor shall be required to furnish a

component which has been tested and qualified for inclusion in the applicable Qualified Products List by the time of award of the subcontract. Delay resulting from the prime contractor awaiting qualification approval by the Government of a component shall not constitute excusable delay when a previously qualified component could have been procured in time to meet the end item delivery schedule.

(c) Procurements involving qualified products shall be governed by (1) through (4) below.

(1) Synopses of proposed procurements shall be published by purchasing activities, in accordance with 1-1003, promptly upon receipt of purchase requests.

(2) The maximum time consistent with delivery requirements shall be allowed between issuance of the solicitation and the opening of bids or the award of a negotiated contract. As a minimum, however, contracting officers shall allow 30 calendar days between the dates of issuance and opening (award, in the case of negotiated contracts), *provided* that periods of less than 30 days may be set in cases of urgency when the justification for a shorter period is set forth in writing and made a part of the procurement file. In appropriate cases, advance notice of procurement involving qualified products may be given suppliers through the use of preinvitation notices. Such notices shall identify the specification requiring qualification.

(3) In procuring qualified products by formal advertising, invitations for bids will be distributed to suppliers in the same manner as if a qualified product were not involved, and will not be restricted to suppliers whose products have been qualified.

(4) Contracting officers shall forward requests from suppliers concerning qualification of products to the specification preparing activity.

1-1107.2 *Contract Provisions.*

(a) When qualified end products are to be procured, insert the provision in 7-2003.6.

(b) When qualified products are to be procured as components of end items, insert the clause in 7-2003.7.

1-1107.3 *Effect of Debarment or Suspension.* Notwithstanding any other provision of this Part, the inclusion of a product on the qualified products lists may be denied, and the qualification of a listed product may be withdrawn, by the Department concerned, without notification to the manufacturer, if the name of the manufacturer appears on the lists of debarred or ineligible bidders which are maintained pursuant to Section I, Part 6. With reference to Type B listings, the provisions of this paragraph shall be applicable only if the qualified product is in the category prescribed by the Secretary of Labor (see 1-603).

1-1108 Waiver of Qualification Requirement. When procuring a product under a specification which includes qualification requirements either for the end item or for components of the end item, such qualification requirements can be waived only by the activity that prepared the specification. In appropriate cases, when requested by the contracting officer, the preparing activity may waive qualification requirements. A notice, issued by the preparing activity, directing a waiver of the qualification requirement, constitutes adequate authorization for

(xi) *New Guinea-Australia:* Includes Australia; New Guinea; Tasmania; New Zealand and Melanesia (comprising generally the Admiralty Islands, New Ireland, New Britain, the Solomons, New Hebrides and New Caledonia).

(xii) *East Asia:* Includes the ports of the mainland and islands of East Asia from and including Thailand to and including Japan; includes the Philippines, Formosa, the Ryukyu Islands and the Bonins.

(xiii) *Hawaii-Central Pacific:* Hawaiian Islands; Wake/Marcus; and Oceania and Micronesia (comprising generally Palau, Marianas, Carolines, Gilberts, Fijis, Marquesas, Tuamotu Archipelago, etc., but excluding oceanic island possessions of South American countries).

(xiv) *Alaska and Aleutian Islands:* Includes the western coast of Canada and Alaska (including the Aleutian Islands) south of Cape Prince of Wales.

(xv) *U.S. Northwest:* Includes all Oregon and Washington ports.

(xvi) *U.S. West Coast:* Includes all California.

(xvii) *Western Mexico and Central America:* Includes the western coast of Mexico and the western coast of Central America.

(xviii) *Western South America:* Includes the western coast of South America from (and including) the Republic of Colombia to Cape Horn, and the Pacific Islands possessions of South American countries.

(xix) *Exempt Areas:*

(A) Alaska north of Cape Prince of Wales.

(B) Greenland, except Narsarssuak.

(C) Northern and eastern Canada from Goose Bay, Labrador, to Alaska.

(D) Ports and facilities under security restrictions in otherwise nonexempt areas.

(E) Antarctica.

(b) The procedures set forth below are applicable to all ocean shipments of supplies except:

(i) shipments in vessels assigned to United States Navy fleets other than the Military Sealift Command;

(ii) shipments which originate or terminate in "exempt areas" as established in (a) above;

(iii) shipments which originate and terminate in the same geographic area; *provided*, however, that supplies of the type described in 1-1402(i)(A) above shall be transported in United States-flag vessels to the extent such vessels are available at fair and reasonable United States-flag rates;

(iv) shipments aboard vessels of the Panama Canal Commission; and

(v) shipments of classified supplies where the classification prohibits the use of non-Government vessels.

1-1404 Procedures.

(a) Except for those supplies obtained for nonreimbursable contributions to foreign assistance programs for which the ocean transportation is to be provided by and at the expense of the recipient government, ocean transportation of sup-

plies owned by the Government and in the possession of either a Department, or a contractor, or subcontractor of any tier, of a Department, will be provided by the Military Sealift Command. Accordingly, any contract which may involve ocean transportation of property owned by the Government and in the possession of the contractor or any of his subcontractors (including any contract under which title to property may pass to the Government prior to shipment) shall include a clause substantially as in 7-104.19(a). Upon receipt of advice from the contracting officer, the Military Sealift Command shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with this Part and applicable regulations. The Commander of the Military Sealift Command or his designated representative is authorized to make any determination as to availability of United States-flag vessels required to assure such proper utilization.

(b)(1) Except as provided in paragraph (2) below, procuring activities shall include the clause in 7-104.19(b) in any contract which may involve the ocean transportation of supplies of the type described in 1-1402(i)(B) and (C). Additional provisions concerning the vessels to be used may be inserted in accordance with Departmental procedures.

(2) The contract shall include the clause in 7-104.19(c) in lieu of the clause in 7-104.19(b):

(i) when determined by the Head of a Procuring Activity, or his designee, to be necessary to assure proper implementation of the policy expressed in 1-1402; or

(ii) when the procuring activity has been instructed that particular supplies of the type described in 1-1402(i)(B) and (C) above are to be carried exclusively in private United States vessels:

1-1405 Responsibilities of the Contracting Officer. The contracting officer shall forward the applicable shipping document specified in the clauses set forth in 7-104.19(b) to the Department of the Navy (Commander, Military Sealift Command, Attn: M-5), Washington, D.C., 20390, for shipments made under arrangements by the contractor or by a Government agency other than the Military Sealift Command.

1-1406 Reserved.

1-1407 Reserved.

1-1408 Reserved.

1-1409 Construction Contracts. It is the policy of the Department of Defense to require construction contractors, including subcontractors and suppliers, engaged in overseas work to utilize United States-flag vessels to the extent that such vessels are available at fair and reasonable rates for United States-flag vessels. This policy is applicable to any supplies, materials, or equipment shipped from the United States for either the performance of the work or for incorporation in the work. To carry out this policy, the clause in 7-603.41 shall be included in any construction contract which may involve the ocean transportation of materials. Upon request of the contracting officer, the Commander, Military Sealift Command, or his representative, will furnish advice as to the availability of United States-flag vessels for any particular shipment. These requirements shall not apply to Military Assistance Program projects, Agency for International Development

1-2207 Restricted Purchases for Preservation of Domestic Industrial Base.

1-2207.1 *General Policy*. To insure the continued existence of an industrial mobilization base necessary for national defense and in the public interest, it has been determined to restrict purchases of the following items to United States or United States and Canadian manufactured products. However, if the quantity being acquired is determined to be greater than that required to maintain the U.S. defense mobilization base, offers of qualifying country end products may be accepted for such greater quantities of the items listed here and at 6-1405.

1-2207.2 *Jewel Bearings and Related Items*.

(a) *Definitions*. As used in this paragraph, the following definitions apply.

(1) *Jewel Bearing* means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, which has one or more polished surfaces and the function of which is to provide a supporting surface or low friction contact area for revolving, oscillating or sliding parts in an instrument, mechanism, subassembly or part. A jewel bearing may be either unmounted or mounted into a ring or bushing. Examples of types of jewel bearings are: watch hole—olive, watch hole—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cup, double cups.

(2) *Related Item* means a piece of synthetic corundum (sapphire or ruby) which satisfies the following requirements:

(i) made from material produced by the Verneuil flame fusion process;

(ii) a geometric shape (other than a jewel bearing) up to a maximum of one inch in any dimension;

(iii) requires fabrication techniques to include extremely close tolerances and highly polished surfaces identical to those involved in the manufacture of jewel bearings

A related item may be unmounted or mounted in a retaining or supporting structure. Basic shapes and terminology commonly used for related items are: window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, notched plate.

(3) *Price List* is the official U.S. Government Price List for jewel bearings and related items produced by the William Langer Plant in Rolla, North Dakota, which is issued periodically by the General Services Administration.

(4) *Plant* means the Government-owned William Langer Plant, Rolla, North Dakota, which is operated through a contractor by the General Services Administration.

(b) *Policy*. Except as otherwise provided below, it has been determined that Defense requirements for jewel bearings must be obtained from the Plant and that related items must be obtained from a domestic source of manufacture including the Plant.

(c) *Procedures*.

(1) All contractor purchases of jewel bearings shall be made from the Plant unless it cannot meet the requirement. All contractor purchases of related items shall be made from a domestic source of manufacture, including the Plant, unless these sources cannot meet the requirement.

(2) In every solicitation and contract in which items in the Federal Supply Classes and Groups listed in (d) below, or any subassembly, component or part thereof, are specified to be delivered, insert the clause in 7-104.37, except that such clause shall not be used.

(i) in small purchases using small purchase procedures;

(ii) when the procuring contracting officer has positive knowledge that the items being procured do not contain jewel bearings or related items (the contractor's certification, as set forth in (3) below, does not in itself satisfy this requirement);

(iii) in contracts or solicitations for items both procured and used outside the United States, its possessions and Puerto Rico.

(3) In every solicitation for items in the Federal Supply Classes and Groups listed in (d) below, or any subassembly, component or part thereof, require that contractors certify, as an attachment to each proposal or bid, in the form set forth below, that the items to be supplied do or do not include jewel bearings or related items, and that if they are included, that they will be procured in accordance with the clause entitled "*Required Source for Jewel Bearings and Related Items*". Failure to submit this certification shall not render such bid or proposal nonresponsive, but the certification must be obtained from the prospective contractor prior to award. This certification is not required for research and development effort, nor is it required in categories listed in (2) above.

JEWEL BEARING AND RELATED ITEMS CERTIFICATE

This is to certify that jewel bearings and/or related items will / will not (*delete one*) be incorporated in any item covered by this proposal or bid; that if jewel bearings are required, purchase orders will be placed with the William Langer Plant, as provided in the clause entitled "*Required Source for Jewel Bearings and Related Items*"; and that if related items are required, such related items will be procured in the order of priority as follows:

1. From a domestic source, including the Plant, which manufactures such items from the basic hard material, *i.e.*, synthetic ruby or sapphire, or the like.

2. In the event that no domestic source, including the Plant, produces or will produce the required related items, then and only then, will the contractor procure such items from a foreign source.

Estimates of quantity, type, size (including tolerances), of jewel bearings and related items, plus identification of those specific items, components, or subassemblies which require jewel bearings or related items are provided as an attachment to this certificate

Date of Execution .....

Solicitation No. .....

Name .....

Title .....

Firm .....

Address .....

(End of Certificate)

(4) One copy of each affirmative certification by the contractor and its attachment identifying those specific items, components or subassemblies which contain jewel bearings or related items will be annotated with the contract number, the cognizant CAO, and date of award and forwarded by the PCO to the Plant and the ACO. The Plant will compare certification information with actual orders and notify the ACO having cognizance over the contractor if serious discrepancies exist.

(5) The ACO having cognizance over a particular contractor will conduct reviews of appropriate contractor records when information is received from the Plant of serious discrepancies between certifications and orders, or when the

(xviii) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 (Geographic Distribution of Defense Subcontract Dollars).

(xix) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-103.10, 7-104.3, 7-104.32, and 7-104.106, as prescribed by 6-104.5 and 6-803.1(e).

Part II—General Provisions

SECTION I - General Provisions.

(i) such general contract provisions (contract clauses) as required by law and by this Regulation;

(ii) such additional general provisions as may be applicable to the acquisition; and

(iii) such alterations to contract provisions as are appropriate.

Part III—List of Documents, Exhibits, and Other Attachments

SECTION J - List of Documents, Exhibits, and Other Attachments.

(i) Here list all of the documents, exhibits, and other attachments that make up the invitation-for-bids package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example, work frequency schedules, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the invitation proper).

Part IV—General Instructions

SECTION K - Representations, Certifications, and Other Statements of Bidder.

(i) Standard Form 33, Part 2 (Representations and Certifications);

(ii) when considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid the provision in 7-2003.12 concerning his affiliation with other concerns shall be included in this Section K. Failure to furnish the affidavit with the bid shall be treated as a minor informality or irregularity (see 2-405);

(iii) the clause in 7-2003.13 that provides for a preference for labor surplus area concerns shall be

included in invitations for bids that do not involve set-asides for labor surplus area concerns;

(iv) when needed for the purpose of bid evaluation, preaward surveys, or inspection, a requirement that all bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. When it is reasonably anticipated that producing facilities will be used in the performance of the contracts, or when Government requires the information, bidders will be required to state (A) the full address of principal producing facilities (if designation of address is not feasible, a full explanation will be required), and (B) names and addresses of owner and operator if other than bidder;

(v) if the contract is for the Military Assistance Program, include the certificate in 7-2003.50;

(vi) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, include the certificate in 7-2003.47;

(vii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, include the provisions in 7-2003.7-2003.14(b)(1), (2), and (3);

(viii) any requirement for prior testing and qualification of a product, when the item to be acquired is on a qualified products list (see Section 1, Part 11);

(ix) when the contract is for the acquisition of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(x) when shipping weights and dimensions are required to evaluate offers as to transportation costs (see 19-210), a provision substantially as in 7-2003.16 shall be included in the solicitation, except that the paragraph relating to the Government's estimated weights and dimensions may be omitted when such estimates cannot reasonably be developed and the file is documented accordingly, prior to the issuance of the solicitation. Solicitations omitting the paragraph relating to the Government's estimated weights and dimensions shall state that the failure to furnish guaranteed shipping weights and dimensions will render offers nonresponsive, unless the contracting offer determines that the shipping weights and dimensions would clearly not affect the standing of the bids. To aid in computing a reduction when the contractor exceeds the guaranteed maximum(s), the award document will show the weight(s) and dimensions used in the evaluation;

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36357

(B) include in Section L of the solicitation a provision substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Offerors allowing less than the number of calendar days specified in the "Offer" portion of SF 33 for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xviii) when the contract is to contain a first article approval clause, the statement required by 1-1903;
(xix) any applicable notices of small business or labor surplus area set-asides (see 1-706.6 and 1-804.2);
(xx) the applicable small business size standard and product classification (see 1-701 and 1-703);
(xxi) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3) (see, for example, 13-202(b));
(xxii) the provision in 7-2003.10 when a "brand name or equal" item is being acquired;
(xxiii) in unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being acquired, or for some other special reason, a statement of such qualifications;
(xxiv) if the solicitation is to include an Industrial Preparedness Production Planning line item, the provision in 7-2003.69 will be included (see 1-2206);
(xxv) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxvi) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.
(xxvii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

SECTION M - Evaluation Factors for Award.
(i) a statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provisions for economic price adjustment as factors for evaluation.

(The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.
(ii) if the solicitation contains an economic price adjustment clause, the provision in 7-2003.23(a);
(iii) when the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see 2-407.5(iii)), the provision in 7-2003.23(b);
(iv) discount provision (see 2-407.3);
(v) when bids (or proposals) are to be solicited f.o.b. origin only and when requirement exists for transit arrangements at transit point(s) in the United States (excluding Alaska and Hawaii) (see 19-206(a)), the provision in 7-2003.23(c);
(vi) to establish the means the Government will use in f.o.b. origin solicitations in applying transportation costs for evaluation (see 19-208.2(c)), the provision in 7-2003.23(d) (which may be modified to accommodate other methods of transportation);
(vii) when the exact destination is not known (see 19-208.4(a)), the provision in 7-2003.24(a);
(viii) when the exact destination is not known (see 19-208.4(a)), or when f.o.b. origin contracts may result (see 19-209), the provision in 7-2003.24(b);
(ix) when the supplies may be purchased f.o.b. origin (see 19-212), the provision in 7-2003.24(c);
(x) when both f.o.b. origin and f.o.b. destination bids are desired (see 19-104.2(b)), the provision in 7-2003.24(d);
(xi) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services, that required by 22-502 for mortuary services, that required by 22-600.3 and 22-600.4 for the preparation of personal property for shipment or storage and the performance of intra-area movement);
(xii) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;

at the end of the statement: '(See paragraph .....**..... of the invitation for bids)'.

* *A 30-day bid acceptance period is normal, but may be less, and in unusual circumstances a period of 60 days may be specified.*

** *Identify specific paragraph in the invitation for bids which includes the provision in (B) below.*

(B) Include a provision in the invitation for bids substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Bids allowing less than the number of calendar days specified in the 'Bid' portion of SF 19 (or on the reverse of SF 21 as applicable) for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xiii) any authorized special provisions, necessary for the particular procurement, relating to such matters as progress payments (see Appendix E, E-504), patent rights (see 18-908), liquidated damages, profit limitations, or Buy American Act (see 7-2003.65);

(xiv) such general contract provisions or conditions as are required by law or by this Regulation;

(xv) any applicable wage determinations of the Secretary of Labor;

(xvi) a statement of the exact basis upon which bids will be evaluated and award made; to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provision for economic price adjustment as factors for evaluation (see 18-201). (The amount of any royalty payable under the royalty sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.

(xvii) when considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid an affidavit concerning his affiliation with other concerns. To accomplish the foregoing, the provision in 7-2003.12 shall be included in the invitation for bids. Failure to furnish the affidavit with the bid shall be treated as a minor informality or irregularity (see 2-405);

(xviii) directions for obtaining copies of any documents, such as plans, drawings, and specifications, as well as information as to charge, if any, to be made for drawings and specifications (see 16-401.2(c)(iii)(2)(B));

(xix) in accordance with 6-1104, the United States owned foreign currency provisions in 7-2003.62;

(xx) information regarding bidding material which shall include Instructions to Bidders, the Bid Form, the Contract Form, the General Provisions, any conditions, the specifications and drawings (see 1-1203);

(xxi) if the contract is to be conditioned on the availability of funds, a clear statement of such condition (see 1-318),

(xxii) a statement that prospective bidders may submit inquiries by writing or calling (*collect calls not accepted*) Mr. (*insert name and address, telephone area code, number, and extension*),

(xxiii) a statement that prospective bidders should indicate in the bid the address to which payment should be mailed, if such address is different from that shown for the bidder,

(xxiv) invitations for bids which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22,

(xxv) unless exempted by 12-805 from inclusion of the Equal Opportunity clause—

(A) on the face page or cover sheet of the solicitation, these notices

I. NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE WHICH MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION

II. NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause. (1975 OCT)

(B) the applicable provisions in 7-2003.14(b), (c), and (d);

(xxvi) the applicable small business size standard (see 1-701 and 1-703);

(xxvii) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted,

(xxviii) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xxix) if the contract is pursuant to the Balance of Payments Program, the procedures in 6-802 are applicable;

(xxx) except when a waiver has been granted (see 18-110) prior to solicitation, if the solicitation contains one or more items subject to statutory cost limitation, the Cost Limitation provision in 7-2003.27;

(xxxi) if a construction contract is estimated to exceed $1,000,000 or in appropriate contracts under $1,000,000, the clause set forth in 7-603.15 and a statement that the successful bidder must furnish the contracting officer within (number) days after award the items of work which he will perform with his own forces and the estimated cost of those items unless he has submitted those items with his bid.

(lvii) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*");

(lviii) insert the Woman-Owned Business representation in 7-2003.80;

(lix) insert the Percent Foreign Content representation in 7-2003.81;

(lx) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82;

(lxi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(c) Master Solicitation. A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DOD. The document is pre-positioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(1) The master solicitation shall not be used unless repetitive purchases are anticipated.

(2) The master solicitation shall not include non-essential or infrequently used provisions.

(3) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of DAR clauses. The master solicitation shall not include Section VII clauses; however, where the acquisition requires performance outside the U.S., Section VII clauses may be included in the master solicitation.

(4) Copies of a master solicitation shall be made available upon request.

(5) There shall be no interim changes, revisions nor amendments to the master solicitation itself. The only approved method of revising the master solicitation shall be by reissuing the entire master solicitation.

(6) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(7) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result. Approval by the Head of the Contracting Activity is required.

2-202 Miscellaneous Rules for Solicitation of Bids.

2-202.1 *Bidding Time.*

(a) Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids. As a general rule, bidding time shall be no less than 30 calendar days. For potential sources in participating countries, see 6-1403.1(a); for sources in FMS/offset arrangement countries, see 6-1310.3(b); and for sources in defense cooperation countries, see 6-1502.1.

(b) This rule need not be observed in special circumstances; for example, where the contracting officer has valid reason to determine that bidders in the second step of two-step formal advertising can prepare and submit their bids in less than 30 calendar days, or where the urgency for the supplies or services does not permit such delay. When the contracting office is located in the United States and a prospective bidder is located at a foreign address, the mailing time associated with international air mail (see 2-203.1) shall be considered when establishing the bid opening date. For items on Qualified Products Lists, see 1-1107.1; for construction contracts, see 18-202(b); and for brand name or equal items, see 1-1206.2.

2-202.2 *Telegraphic Bids* As a general rule, telegraphic bids will not be authorized. However, when, in the judgment of the contracting officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the schedule of the invitation for bids will contain the provision in 7-2003.29.

2-202.3 *Bid Envelopes.* Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders. To provide for ready identification and proper handling of bids, Optional Form 17, "Sealed Bid Label", obtainable from the General Services Administration, may be furnished with each bid set to provide the bidder with a means of specifically identifying his bid.

2-202.4 *Bid Samples.*

(a) *Definition.* The term "*bid sample*" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. Such samples will be used only for the purpose of determining the responsiveness of the bid and will not be considered on the issue of a bidder's ability to produce the required items.

(b) *Policy* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure acquisition of an acceptable product. It may be appropriate to require bid samples, for example, where the acquisition is of products that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable

36300 Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

(f) *Unsolicited Descriptive Literature.* If the furnishing of descriptive literature is not required by the invitation for bids, but such literature is furnished with a bid, it will not be considered as qualifying the bid, and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(g) See 2-404.4 for requirements with respect to restrictions on the public disclosure of descriptive literature submitted by a bidder.

2-203 Methods of Soliciting Bids.

2-203.1 *Mailing or Delivery to Prospective Bidders.* Invitations for bids (or pre-invitation notices) shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition and, in accordance with 1-1002.1, may be provided to others having a legitimate interest to the extent invitations for bids are available. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by international air mail if security classification permits. For bidding time, see 2-202.1.

2-203.2 *Dissemination of Information Concerning Invitations for Bids.* For procedures concerning displaying of bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsizing, see 1-1002.4, 1-1002.5, 1-1002.6, and 1-1003.

2-204 Office of Permanent Record. Each purchasing activity is the office of permanent record for every invitation for bids issued and distributed by it and for each abstract or record of bids. The file of the invitation for bids should show the distribution which was made and the date thereof.

2-205 Bidders Mailing Lists.

2-205.1 *Establishment of Lists.*

(a) Bidders mailing lists shall be established by purchasing activities to insure access to adequate sources of supplies and services except where the requirements of the purchasing office can be obtained within the local trade area through utilization of the simplified small purchases procedures (Section III, Part 6), or are nonrecurring.

(b) All eligible and qualified suppliers who have submitted bidders mailing list applications, or whom the purchasing activity considers capable of filling the requirements of a particular procurement shall be placed on the appropriate bidders mailing list. Planned producers under the Industrial Readiness Planning Program shall be included on the bidders mailing list for their planned items. See also 1-1006(b). When new prospective suppliers are placed on the bidders mailing list, they shall be notified. The issuance of a solicitation within a reasonable time may be considered appropriate notification. Those not meeting the criteria for placement on the bidders mailing list also shall be notified accordingly.

(c) Business firms listed on Bidders Mailing List (BML) will be identified by size as per 1-701. The size status should be established prior to initially listing a business firm on a purchasing activity's BML. Minority firm designation will be shown on the BML whenever noted on the SF 129 submitted by a particular firm.

(d) Bidders Mailing list Application (Standard Form 129) shall be used for obtaining information needed, as prescribed in 16-810, in the establishment and maintenance of bidders mailing lists. Supplemental information, where required, may be obtained by using DD Form 558-1 (Bidders Mailing List Application Supplement).

(e) For special instructions relative to the establishment of a Research and Development Bidders Mailing List, see ASPR Supplement No. 4, "Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists."

2-205.2 *Removal of Names from Bidders Mailing Lists.*

(a) The name of each concern failing to respond to an invitation for bids, or pre-invitation notice (see 2-205.6) may be removed from the bidders mailing list without notice to the concern but only for the item or items involved in such invitation or notice. Where a concern fails to respond to two consecutive invitations for bids or pre-invitation notices, its name shall be removed from the bidders mailing list to the extent indicated above, except that, in individual cases, concerns thus failing to respond may be retained on a bidders mailing list if such retention is considered to be in the best interest of the Government. Both actual bids and written requests for retention on the bidders mailing lists are "responses" to invitation for bids or pre-invitation notices.

(b) The names of concerns which have been (i) debarred from entering into Government contracts or (ii) otherwise determined to be ineligible to receive an award of a Government contract, including ineligibility because of suspension or

other disqualifications, shall be removed from the bidders mailing lists to the extent required by such debarment or other determination of ineligibility.

2-205.3 *Reinstatement on Bidders Mailing Lists.* Concerns which have been removed from bidders mailing lists may be reinstated upon request or new application on Standard Form 129. No concern which is debarred or ineligible shall be reinstated during the period of debarment or ineligibility.

2-205.4 *Excessively Long Bidders Mailing Lists.*

(a) *General.* To prevent excessive administrative costs of a procurement, mailing lists should be used in a way which will promote competition commensurate with the dollar value of the purchase to be made. As much of the mailing list will be used as is compatible with efficiency and economy in securing adequate competition as required by law. Where the number of bidders on a mailing list is considered excessive in relation to a specific procurement, the numbers of firms to be solicited may be reduced by any method consistent with the foregoing, including those described in (b) below and 2-205.6. The fact that less than an entire mailing list is used shall not in itself preclude furnishing of bid sets upon request made by concerns not invited to bid.

(b) *Rotation of Lists.* Mailing lists may be rotated, but to do so will require considerable judgment as to whether the size of the transaction justifies rotation. Consideration also should be given as to whether time permits utilization of the pre-invitation notice (see 2-205.6). In rotating a list, the interest of small business (see 1-702(b)(v)) and the existence of labor surplus areas (see 1-803(a)(v)) shall be considered. Whenever the rotation method is employed, the successful bidder on the previous procurement for the same or similar items and those prospective suppliers who have been added to the bidders mailing list since the last procurement shall be solicited, in addition to those bidders comprising that segment of the list selected for use in a particular procurement, except where such action would be precluded by use of the small business total set-aside procedures.

2-205.5 *Release of Bidders Mailing Lists.*

(a) The comprehensive bidders mailing list established by purchasing offices under this section shall be made available to the public upon written request made in accordance with 1-329. When it is necessary to dispatch identical information by means of electrical transmission to prospective bidders or offerors, the electrically transmitted message, when released for communications handling, shall be marked "BOOK MESSAGE—TRANSMIT A SINGLE ADDRESS MESSAGE" to preclude prospective bidders or offerors knowing the names of others solicited. However, information as to sources solicited may be made available to other Government agencies, at their specific request, and upon the condition that the list will not be made available for inspection prior to award to anyone outside the Government.

(b) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, material suppliers, bidders and other having a bona fide interest in such information, will be supplied upon request with a list of all prospective bidders furnished copies of the plans and specifications.

2-205.6 *Pre-Invitation Notices.* In lieu of initially forwarding complete bid sets, the purchasing activity may send pre-invitation notices to concerns on the mailing list. The notice shall:

(i) specify the date by which bidders should return the notice in order to receive a complete bid set;

(ii) describe the requirement, or include the schedule of the invitation for bids, so as to furnish an item description and a condensation of

other essential information providing concerns with an intelligible basis for judging whether they have an interest in the acquisition; and

(iii) expressly notify concerns that if no bid is to be submitted, they should advise the issuing office in writing if future invitations are desired for the type of supplies or services involved.

Drawings, plans, and specifications normally will not be furnished with the pre-invitation notice. The return date in the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets will be sent to concerns which request them. This procedure is particularly suitable to major contracting activities where lengthy invitations for bids and long bidders mailing lists are common.

2-206 Small Business and Labor Surplus Area Set-Asides. See Section I, Parts 7 and 8.

2-207 Pre-Bid Conference. The pre-bid conference is a procedure which may be used, generally in complex acquisitions, as a means of briefing prospective bidders (e.g., acquisitions that were formerly negotiated are to be formally advertised) and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. Since the invitation for bids itself must be sufficiently clear and complete to insure that bidders are bidding on the same basis, the need for this procedure should be rare. The pre-bid conference shall never be used as a substitute for amending a defective or ambiguous invitation, and may be used only when approved at a level higher than the contracting officer. It shall be conducted in accordance with the procedure prescribed in 3-504. All interested parties, including representatives from qualifying country sources, shall be invited. (See 6-1403.1(a)(8), 6-1310.3(b), and 6-1502.1.)

2-208 Amendment of Invitation for Bids.

(a) If, after issuance of an invitation for bids but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids, using Standard Form 30 (see 16-101), whether or not a pre-bid conference is held. The amendment shall be sent to everyone to whom invitations have been furnished and shall be displayed in the bid room.

(b) Before issuing an amendment to an invitation for bids, the period of time remaining until bid opening and the need for extending this period by postponing the time set for opening must be considered. Where only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegram or telephone. Such notification should be confirmed in the amendment.

(c) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation, whether or not a pre-bid conference is held, if such information is necessary to the bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

(c) When an award is determined by drawing by lot, the names and addresses of the three witnesses and the person supervising the drawing shall be placed on all copies of the abstract of bids or otherwise recorded.

(d) In each award where preference is to be given under this Section, the contracting officer shall, prior to award, obtain from such concern a written statement that it will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority.

2-407.7 *Reserved.*

2-407.8 *Protests Against Award.*

(a) *General.*

(1) Contracting officers shall consider all protests or objections to the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision on the written protest. (See 1-308(b)(i).) (See 1-703(b) for protests of small business status and 12-604(a) for protests involving eligibility under the Walsh-Healey Public Contracts Act.) An interested party wishing to protest to the Comptroller General of the United States against an award of a contract should do so in accordance with General Accounting Office Regulations, Title 4, Chapter 1, Part 20 of the Code of Federal Regulations.

(2) When a protest, before or after award, has been lodged with a higher authority or the Comptroller General and the contracting officer is requested to submit a report, the file should include:

(i) a copy of the protest;

(ii) a copy of the bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;

(iii) a copy of the invitation for bids including the specifications or portions thereof relevant to the protest,

(iv) a copy of the abstract of bids or relevant portions thereof;

(v) any other documents which are relevant to the protest; and

(vi) a statement signed by the contracting officer setting forth his findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegations of the protest. If the award was made after receipt of the protest, the contracting officer's report will include the determination prescribed in (b)(3).

(3) Other persons, including bidders, involved in or affected by the protest shall be given notice of the protest. They shall also be advised that they may submit their views and relevant information to the contracting officer within a specified period of time, normally within one week, and that copies of such submissions should be furnished directly to the General Accounting Office when the protest has been filed with that office.

(4) Timely action on protests is essential to avoid undue delay in procurements and to assure fair treatment to protesting firms or individuals. Accordingly, protests should be handled on a priority basis. Upon receipt of informal advice that a protest has been filed with the General Accounting Office, the contracting officer shall immediately begin compiling the information necessary for a report to that office. To expedite processing, the Departmental official who furnishes the Department's report to the General Accounting Office (GAO) should upon request of the protestor or the GAO simultaneously furnish a copy (except for classified or privileged information) to the protester, and advise the GAO that this has been done. In such cases, the protester shall be requested to furnish a copy of any comments on the administrative report directly to the General Accounting Office as well as to the contracting officer.

(5) To facilitate these submissions to the GAO, each Department shall furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests.

(b) *Protests Before Award.* If award has not been made, the contracting officer may require that written confirmation of an oral protest be submitted by a specified time and inform the protester that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded and award may be made in the normal manner unless the contracting officer, upon investigation, finds that remedial action is required, in which event such action shall be taken.

(1) In appropriate cases, notice of a protest will be given to bidders affected thereby. For example, when a protest against the making of an award is received and the contracting officer determines to withhold the award pending disposition of the protest, the bidders whose bids might become eligible for award should be informed of the protest and requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with consent of sureties, if any) in order to avoid the need for readvertisement. In the event of failure to obtain such extension of bids, then consideration should be given to proceeding with award under (3) below.

(2) When a protest has been received before award, the views of the Office of the Comptroller General regarding the protest should be obtained before award whenever such action is considered to be desirable. When it is known that a protest against the making of an award has been lodged directly with the Comptroller General, a determination to make award under (3) below must be approved at an appropriate level above that of the contracting officer, in accordance with Departmental procedures. While award need not be withheld pending final disposition by the Comptroller General of a protest, a notice of intent to make award in such circumstances shall be furnished the Comptroller General, and formal or informal advice should be obtained concerning the current status of the case prior to making the award.

(C) REGULAR DEALER-MANUFACTURER (applicable only to supply contracts exceeding $10,000)

He is a ☐ regular dealer in, ☐ manufacturer of, the supplies offered.

(D) CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(Insert the provision in 7-2003.1 in accordance with 1-115(a).)

(ii) when a request for proposals form other than SF 33 is used, a requirement for stipulation of a time within which the Government may accept the proposal;

(iii) when SF 33 is not used, the Contingent Fee clause in 7-2002.1 (if required by 1-506.1) and the following:

TYPE OF BUSINESS ORGANIZATION

The Offeror/Quoter represents and certifies as part of his proposal/quotation that: (Check all applicable boxes or blocks.)

He operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a corporation, incorporated under the laws of the State of _____.

(iv) a statement requesting the prospective offeror or quoter to list the names and telephone numbers of persons authorized to conduct negotiations;

(v) where SF 33 (Solicitation, Offer, and Award) is not used, a statement that prospective offerors/quoters should indicate in the offer/quotation the address to which payment should be mailed, if such address is different from that shown for the offeror/quoter. (Contracting officers shall include this information in all resultant contracts that are to be administered by a Defense Contract Administra- Services Regional Office);

(vi) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, the provisions in 7-2003.14(b)(1), (2), and (3);

(vii) the clause in 7-2003.13 shall be included in Requests for Proposals that do not involve set-asides for labor surplus area concerns;

(viii) a requirement that the proposal or quotation state the intended place of performance, including the street address, and the names and addresses of owner and operator of producing facilities, if other than offeror or quoter, when it is reasonably anticipated that such facilities will be used in the performance of the contract;

(ix) if the contract is for the Military Assistance Program, the certificate in 7-2003.50;

(x) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, the certificate in 7-2003.47;

(xi) a request that prospective offerors or quoters state whether, to their knowledge, the contract performance involves the acquisition of Government production

and research property, the disposal of which may be restricted by patent or other rights (see 13-307(b));

(xii) when the delivery of technical data is required, insert the provision in 7-2003.66;

(xiii) the appropriate transportation solicitation provisions as required by 2-201(a) Section K (x) through (xiv);

(xiv) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);

(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);

(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);

(xv) any requirement for royalty information to be furnished with the offer of quotation (see 9-110(a));

(xvi) when neither SF 33 (Solicitation, Offer, and Award) nor SF 18 (Request for Quotations) is used, insert a requirement for inclusion of "country" as part of quoter's/offeror's address;

(xvii) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), insert the provision in 7-2003.15;

(xviii) when the proposed acquisition consists of a partial set-aside for LSA firms (1-706.7 or 1-804.1) or a partial set-aside for small business firms (1-706.6), include the clause in 7-2003.21;

(xix) the Clean Air and Water certification in 7-2003.71;

(xx) insert the Small Disadvantaged Business Concern representation in 7-2003.74;

(xxi) insert the Woman-Owned Business representation in 7-2003.80;

(xxii) insert the Percent Foreign Content representation in 7-2003.81;

SECTION L - Instructions and Conditions, and Notices to Offerors/Quoters.

(i) when SF 33 is used, it shall be accompanied by SF 33A (Solicitation Instructions and Conditions); alternatively, SF 33A may be incorporated by reference to the form name, number and edition date;

(ii) the Late Technical Proposals provision in 7-2002.3 or the Late Proposals provision in 7-2002.4 (these replace paragraphs 7 and 8 of SF 33A);

(iii) the Order of Precedence provision in 7-2003.41 (this replaces paragraph 19 of SF 33A);

(iv) type of contract contemplated, together with type of repricing, and economic price adjustment, if any;

(v) when telegraphic offers are authorized, a provision similar to that in 7-2003.29;

(vi) permission, if any, to submit alternate offers, including alternate materials or designs (see 1-1207);

(vii) if no award will be made for less than the full quantities solicited, a statement to that effect;

(viii) if award is to be made by specified groups of items or in the aggregate, a statement to that effect;

(ix) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provision in 7-2003.25;

(x) directions for obtaining copies of any documents, such as plans, drawings and specifications, that have been incorporated by reference (see 1-1203);

(xi) information as to requirements for a Certificate of Current Cost or Pricing Data (see 3-807);

(xii) any requirements for samples or descriptive literature (for definitions, see 2-202.4 and 2-202.5(a), respectively);

(xiii) when SF 33 is not used, consistent with 3-805.1(a)(v), notice to all offerors that award may be made without discussion of proposals;

(xiv) if the contract involves performance of services on a Government installation, the provision in 7-2003.39;

(xv) in accordance with 6-1104, the U.S.-owned foreign currency provision in 7-2003.62;

(xvi) solicitations that will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xvii) when the contract is to contain a first article approval clause, the statement required by 1-1903;

(xviii) any applicable notices of small business or labor surplus area set-asides (see 1-706 and 1-804.2);

(xix) the applicable size standard and product classification (see 1-701 and 1-703);

(xx) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3);

(xxi) description of the procedures to be followed in obtaining permission to use Government production and research property (see Section XIII, Parts 4 and 5);

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36365

(xxii) the provision in 7-2003.40 concerning unnecessarily elaborate proposals;
(xxiii) the provision in 7-2003.10 (suitably modified for negotiation procedures) when a "brand name or equal" item is being acquired;
(xxiv) instructions regarding the marking of information that is not to be disclosed to the public or used by the Government for any purpose other than the evaluation of the proposals or quotations (see 3-507.1);
(xxv) instructions with respect to disposition of drawings and specifications supplied with the request for proposals or request for quotations;
(xxvi) statutory cost limitation, if any;
(xxvii) if the DD Form 1423 (Contract Data Requirements List) is used, a provision that if the offeror fails to enter the required information in Blocks 25 and 26 of DD Form 1423 in accordance with instructions on the form as part of his submission and refuses to do so on request, his offer may be rejected;
(xxviii) a statement covering special technical capabilities that the offeror must possess;
(xxix) a description of any information required to support proposed prices (subcontract structure, make-or-buy program, purchasing system, royalty, and cost and price information) (see Section III, Parts 8 and 9; Section IX, Part 1; and Section XXIII);
(xxx) in accordance with 7-2003.14(a), the notice of Preaward On Site Equal Opportunity Compliance Review set forth therein;
(xxxi) when Cost/Schedule Control Systems Criteria are required (see 1-331(h)), the provision in 7-2003.43 shall be included;
(xxxii) if the solicitation is to include an Industrial Preparedness production planning line item, the provision in 7-2003.68 shall be included;
(xxxiii) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxxiv) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;
(xxxv) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.
(xxxvi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(xxviii) the provision in 7-2003.40;
(xxix) if the contract is to be conditioned on the availability of funds, a clear statement of such condition (see 1-318);
(xxx) such general contract provisions or conditions as are required by law or by this Regulation;
(xxxi) Reserved;
(xxxii) when the acquisition involves a set-aside for small business concerns, the following provision will be placed on the face of the solicitation form or on a cover sheet:

THIS IS A .....% SET ASIDE FOR SMALL BUSINESS CONCERNS.

(xxxiii) a statement that prospective offerors may submit inquiries by writing or calling (collect calls not accepted) Mr. (insert name and address; telephone area code, number, and extension);
(xxxiv) Requests for Proposals which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;
(xxxv) a statement requesting the prospective offeror to list the names and telephone numbers of persons authorized to conduct negotiations;
(xxxvi) if the contract is pursuant to the Balance of Payments Program, the procedures in 6-802 are applicable;
(xxxvii) in accordance with 6-1104, the provision in 7-2003.62;
(xxxviii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause—

(A) on the face page or cover sheet of the solicitation, these notices:

I. NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE WHICH MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION.

II. NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause. (1975 OCT)

(B) the applicable provisions in 7-2003.14(b), (c), and (d);
(xxxix) the applicable small business size standard (see 1-701 and 1-703);
(xl) *Reserved;*

(xli) if pursuant to 1-1504, options are to be evaluated for award, the applicable *Evaluation of Options* provision shall be inserted;

(xlii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (This may be placed elsewhere so long as the notice is adjacent to the limitation as to option price.)

(xliii) any requirement for royalty information to be furnished with the offer, proposal or quotation (see 9-110(a));

(xliv) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xlv) a statement on the first sheet or on a cover sheet of the Request for Proposals that:

PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001.

(xlvi) a statement of arangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;

(xlvii) information which may affect performance of the work such as boring samples, original boring logs, etc.;

(xlviii) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any new utilities are adequate for the needs of both the Government and the contractor (see 7-603.30);

(xlix) Reserved;

(l) Reserved;

(li) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);

(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);

(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);

(lii) the *Late Technical Proposals* provision in 7-2002.3, or the Late Proposals provision in 7-2002.4, (these replace paragraphs 7 and 8 of SF 22);

(liii) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;

(liv) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;

(lv) the *Clean Air and Water Certification* in 7-2003.71;

(lvi) Reserved;

(lvii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;

(lviii) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lix) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(lx) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*").

(lxi) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82.

(lxii) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-104.3, 7-104.32, 7-2003.47, and 7-104.106 as prescribed in 6-104.5, 6-803.1(e).

(lxiii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(d) *Oral Solicitations.*

(1) Oral solicitations are authorized for small purchases (see Section III, Part 6) and for the acquisition of perishable subsistence.

(2) Oral solicitations, other than those described in (1) above, are authorized in cases where the processing of a written solicitation would delay the furnishing of the supplies or services to the detriment of the Government. Examples of such circumstances may include those listed in 3-202.2. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. In addition to other applicable documentation requirements (see 1-308), the record of contract actions above shall include a resume of the circumstances that justified use of an oral solicitation, item description, quantity, deliveries required, sources solicited, prices quoted (including name of individual contacted), date and time contacted, and the solicitation number (see 20-203) provided the prospective sources. Should the issuance of the resulting contractual instrument be unduly delayed, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

(3) Use of oral solicitation does not relieve the contracting officer from complying with other applicable portions of this Regulation; e.g., the appropriate requirements of (b) above, postaward notice of offerors (see 3-508.3), price negotiation policies and techniques (Section III, Part 8), and submission of same terms and conditions to all offerors.

(e) *Master Solicitation.* Master solicitation for negotiated contracts may be established, maintained, and utilized in accordance with 2-201(c).

3-502 Solicitation for Informational or Planning Purposes. See 1-309.

3-503 Methods of Soliciting Proposals.

3-503.1 *Bidders Mailing Lists.* Bidders mailing lists for negotiated contracts shall be established, maintained, and utilized in accordance with 2-205

3-503.2 *Delivery of Solicitations to Prospective Offerors* When a purchasing office is located in the United States, any solicitation sent to a prospective offeror located at a foreign address shall be sent by international air mail, if security classification permits.

3-504 Pre-proposal Conferences.

3-504.1 *General.*

(a) The pre-proposal conference is a procedure which may be used, generally in complex negotiated acquisitions, as a means of briefing prospective offerors after a solicitation has been issued but before offers or proposals are prepared.

(b) Such a conference permits the Government to explain or clarify complicated specifications and requirements to interested firms. It may also be used to provide an opportunity for interested firms to examine a model of the equipment being acquired, where for reasons such as security or limited quantities, such model can only be shown at a specific time and location.

3-504.2 *Procedure.*

(a) When it is determined to be in the best interests of the Government to hold a pre-proposal conference, the contracting officer shall make the necessary arrangements and shall notify all those to whom solicitations have been issued as to the time, place, and general nature of the proposed conference. Such a determination may be made as a result of questions and problems raised by prospective offerors. Adequate notice shall be given to prospective offerors, including qualifying country sources (6-001), so that all who wish to may arrange for representation. The notice shall define as explicitly as possible the nature and scope of the conference. If time permits, prospective offerors should be asked to submit any questions they may have in advance, in order to give the purchasing office time to prepare and to make the conference as fruitful as possible.

(b) The pre-proposal conference shall be conducted by the contracting officer or his representative, and attended by technical and legal personnel as appropriate.

(c) All prospective offerors shall be furnished identical information in connection with the proposed acquisition. Remarks and explanations at the conference shall not qualify the terms of the solicitation and specifications. All conferees shall be advised that unless the solicitation is amended in writing it will remain unchanged and that if an amendment is issued, normal procedures relating to the acknowledgment and receipt of solicitation amendments shall be applied. A complete record shall be made of the conference.

3-505 Amendment of Request for Proposals and Request for Quotations—Prior to Closing Date.

(a) If, after issuance of a request for proposals or quotations but before the closing date of their receipt, it becomes necessary to make a significant change in quantity, specifications, or delivery schedules, or to make any change in closing dates, or to correct a defect or ambiguity, the change shall be accomplished by issuance of an amendment to the request, whether or not a preproposal conference is held. Standard Form 30 (see 16-102.3) shall be used for amending a request for proposals. Requests for quotations may be amended by letter.

(b) When it is considered necessary to issue an amendment to a request for proposals or request for quotations, the period of time remaining before closing and the need for extending this period by postponing the time set for closing must be considered. Where only a short time remains before the time set for closing, consideration should be given to notifying offerors or quoters of an extension of time by telegram or telephone. Such notification should be confirmed in the amendment.

(c) Any information given to a prospective offeror or quoter concerning a request for proposals or request for quotations shall be furnished promptly to all other prospective offerors or quoters as an amendment to the request, whether or not a pre-proposal conference is held, if such information is necessary to offerors or quoters in submitting proposals or quotations on the request, or if the lack of such information would be prejudicial to uninformed offerors or quoters. No award shall be made on a request for proposals unless such amendment thereto has been issued in sufficient time to permit prospective offerors to consider such information in submitting or modifying their proposals.

3-506 Late Proposals and Modifications of Proposals.

(a) This paragraph does not apply to simplified small purchases made pursuant to Section III, Part 6.

(b) Offerors are responsible for submitting proposals and modifications of proposals, including final modifications at the conclusion of negotiations, so as to reach the designated Government office on time. Proposals and modifications of proposals received in the office designated in the request for proposals after the exact time specified are "late" and shall be considered only if the circumstances outlined in the provision in 7-2002.4 are applicable. Unless a specific time for receipt of proposals is stated in the request for proposals, the time for receipt shall be the time for normal close of business of the office designated for receipt of proposals on the date proposals are due.

(c) When a late proposal or modification of proposal is received and it is clear from available information that it cannot be considered for award, the Contracting Officer shall promptly notify the offeror that it was received late and will not be considered (see also 3-506(e)). Such notice need not be given where the proposed contract is to be awarded within a few days and notice pursuant to 3-508.3 would suffice. However, when a late proposal or modification of proposal is transmitted by registered or certified mail and is received before award but it is not clear from available information whether it can be considered, the offeror shall be promptly notified substantially in accordance with the notice

Part 6—Small Purchase and Other Simplified Purchase Procedures

3-600 Scope of Part. This Part sets forth simplified procedures for the procurement of supplies, nonpersonal services, and construction, the aggregate amount of which does not exceed $10,000, which are referred to in this Part as "small purchases." It also applies to certain other supplies and services. This Part does not preclude the use of bilateral purchase orders (see 3-608.4); Standard Form 19 for construction contracts (see 16-402.2 and 18-302); or a negotiated two-party formal contract for procurements not in excess of $10,000, for example where the procurement is classified or requires specific contract provision relating to technical inspection or test, specification changes, Government-furnished property, insurance, patents, price adjustments, or the like. When the total cost of services to repair Government equipment does not exceed $10,000, such services may be obtained by purchase orders or other appropriate small purchase method, regardless of the value of the Government equipment being repaired (see 3-608.2(b)(1)(viii)), except as provided in 3-608.2(b)(2). Procurements of supplies and services or construction initially estimated to exceed $10,000 shall not be made by the small purchase method, even though resulting awards do not exceed such amounts.

3-601 Purpose. The objective of the simplified purchase methods prescribed herein is to reduce administrative costs.

3-602 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) *Bulk funding concept* means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

(b) *Mail indicia* means the official printed markings substituted for stamps, *i.e.*, "Postage and Fees Paid" and appropriate department. This includes such markings on envelopes, cards, labels, wrappers, or tags.

(c) *Local delivery* means the movement of supplies or commodities wholly within a recognized metropolitan area in which both the point of pickup and the point of delivery are located.

3-603 Policy.

3-603.1 *General.*

(a) All purchases covered by this Part shall be accomplished by negotiation and shall cite the appropriate subparagraph of 10 U.S.C. 2304(a) in accordance with Part 2 of this Section. Such purchases shall be made only when requirements cannot be satisfied by procurement in accordance with Section V. The contracting officer shall use the purchase method covered by this Part which he determines to be most suitable to the immediate requirement and most efficient and economical. Simplified procedures may be used in procurements from Government established sources, if authorized by the basic contract or concurred in by the source.

(b) Requirements aggregating more than $10,000 shall not be broken down into several purchases which are less than $10,000 merely for the purpose of permitting negotiation under the small purchase procedures authorized by this Part. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on "all or none" basis. In such cases, suppliers shall be advised of this award procedure when quotations are requested.

(c) The "bulk funding" concept shall be used to the maximum extent practicable to reduce processing delays, double handling, and documentation. Bulk funding is particularly appropriate when numerous purchases using the same type of funds are to be made during a given period.

(d) Installation or activity transportation facilities may be used for delivery from local suppliers to the purchasing installation only after consideration of the following methods:

(i) supplier delivery;
(ii) common carrier;
(iii) parcel post; and
(iv) mail indicia.

(e) Inspection procedures for small purchases shall be in accordance with 14-308.

(f) The use of United States-owned foreign currency in making payments for small purchases shall be in accordance with Section VI, Part 11.

(g) Each acquisition of supplies and services which has an anticipated value not in excess of $10,000 and which is subject to the small purchase procedures set forth in this part is a small business-small purchase set-aside (1-702(c)) unless the contracting officer (i) determines there is no reasonable expectation of obtaining two or more quotations for purchases in excess of $500 or at least one quotation for purchases not in excess of $500; or (ii) is unable to obtain quotations that are, in either case, competitive with market prices in the industry and competitive in terms of quality and delivery as outlined in 3-604. In the event that the small business-small purchase set-aside is dissolved in accordance with (g)(ii), new quotes shall be solicited on an unrestricted basis. In automated contracting systems, all proposed acquisitions pursuant to small purchase procedures will be screened for reservation in accordance with the criteria in this paragraph. When source lists are maintained for acquisitions not exceeding $10,000, these source lists shall include all known small business concerns. The names of such concerns shall be obtained from the activity Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns. Foreign concerns shall not be solicited nor awarded acquisitions reserved for small business concerns.

(h) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 6-001 and 6-1043.1(a)) is not required unless determined to be in the best interests of the Government.

(i) When the acquisition is not reserved, quotations based on supplying foreign end products shall be evaluated in accordance with the procedures in 6-104.4.

3-604 Competition and Price Reasonableness.

3-604.1 *Purchases Not in Excess of $500.* Small purchases not exceeding $500 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administra-

in 7-2003.50 and the clause in 7-2003.51 shall be inserted in the Schedule, and Clause 6 of the General Provisions (Foreign Supplies) deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(x) Reserved.

(xi) The clauses in 7-104.48 and 7-104.49 may be used in accordance with the provisions of 1-1208.

(xii) When the contract is for mortuary services.

(A) the following clauses shall be inserted in the Schedule—

(I) the Specification clause in 7-1201.4;

(II) the Delivery and Performance clause in 7-1201.7;

(III) the Subcontracting clause in 7-1201.8;

(IV) the Inspection clause in 7-1902.4;

(V) the Professional Requirements clause in 7-1201.11,

(VI) the Facility Requirements clause in 7-1201.12; and

(VII) the Preparation History clause in 7-1201.13;

(B) the Additional Default Provision clause in 7-1201.9 shall be inserted in the Schedule, with the following substitution for paragraph (a) and the first sentence of paragraph (b) of that clause.

(a) This clause supplements the "Termination for Default" clause of this contract.

(b) This contract may be terminated for default by written notice if during the performance of this contract:

(C) The Changes clause in 7-1902.2 shall be substituted for paragraph 17 of the Additional General Provisions on DD Form 1155r.

(xiii) *Reserved.*

(xiv) When required by 6-305, the clauses in 7-104.13 and 7-104.93 shall be added.

(xv) When required by Section XII, Part 10, the clause in 7-1903.41(a) or (b) shall be added.

(xvi) When required by 19-213.2, the clause in 7-104.74 shall be added.

(xvii) In accordance with 1-330, the clause in 7-104.45(a) or 7-1912 may be inserted.

(xviii) When the contract requires the use of a Government bill of lading or mailing indicia, the clause in 7-104.85 shall be added.

(xix) When a bid guarantee is required in accordance with 10-102, the clause in 7-2003.25 shall be included together with the instructions in 10-102.4.

(xx) When performance and payment bonds are required in accordance with 10-103, pertinent instructions with regard thereto shall be added.

(xxi) *Reserved.*

(xxii) When required by 12-302, the *Contract Work Hours and Safety Standards Act* clause in 7-103.16(a) shall be added.

(xxiii) When required by 7-1903.41(d), one of the Linen Supply Service Contract clauses therein shall be added.

(xxiv) When required by 10-405, the *Insurance* clause in 7-104.65 or 7-603.10 shall be added.

(xxv) When required by 1-706.5, the *Notice of Total Small Business Set-Aside* clause in 7-2003.2 shall be added.

(xxvi) The changes authorized by 16-402.2 shall be incorporated when construction procurements are negotiated in accordance with 18-302.

(xxvii) When required by 19-208.3(a), the clause in 7-104.76 shall be added.

(xxviii) When required by 1-2207.3(c)(1)(iii), the clause in 7-104.38 shall be added.

(xxix) When required by 1-2207.4(c)(1)(iii), the clause in 7-104.46 shall be added.

(xxx) When the contract covers the procurement of goods and services for MAP, IMET, and FMS, the clause in 7-104.97 shall be added.

(xxxi) When required by 12-1302(a), insert the clause in 7-103.28.

(xxxii) If the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2.

(xxxiii) When the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders, the clause in 7-104.60 shall be added. The clause may also be used, with appropriate modification, in contracts for other supplies under the circumstances specified in 7-104.60.

(xxxiv) In accordance with 12-807.1, insert the applicable clause in 7-103.18.

(xxxv) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA.

(2) *Use as a Purchase Order of Not More than $10,000 Outside the United States, its Possessions, and Puerto Rico.* DD Form 1155 and 1155r-1, with executed contractor's acceptance when required, are authorized for negotiated purchases of not more than $10,000 when such purchases are for supplies and services procured and used outside the United States, its possessions, and Puerto Rico, *provided*.

(i) the procurement is unclassified;

(ii) no clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth in DD Form 1155r-1, are to be used, except that—

(A) either the standard foreign Disputes clauses in 7-103.12(b) or that clause as modified in accordance with 7-103.12(c) shall be inserted in the Schedule.

(B) When the contract is translated into another language, the Schedule shall contain the provision in 7-2003.44

TABLE OF CONTENTS

SECTION VI--FOREIGN ACQUISITIONS

Paragraph		Page
6-000	Scope of Section	6:1
6-001	Definitions	6:1
	Part 1--Buy American Act--Supply Contracts	
6-100	Scope of Part	6:4
6-101	Reserved	6:4
6-102	General	6:4
	6-102.1 Buy American Act Requirements	6:4
	6-102.2 Balance of Payments Program Requirements	6:4
	6-102.3 Acquisition From, Through or For Other Government Agencies	6:4
6-103	Exceptions	6:5
	6-103.1 Use Outside the United States	6:5
	6-103.2 Nonavailability in the United States	6:5
	6-103.3 Unreasonable Cost or Inconsistency With the Public Interest	6:6
	6-103.4 Scrap	6:6
	6-103.5 Reserved	6:6
	6-103.6 Reserved	6:6
	6-103.7 Commissary Resale	6:6
6-104	Procedures	6:6
	6-104.1 Applicability	6:6
	6-104.2 Solicitation of Offers	6:6
	6-104.3 Reserved	6:7
	6-104.4 Evaluation of Offers	6:7
	6-104.5 Clauses	6:10
	6-104.6 Reserved	6:10
6-105	List of Excepted Articles, Materials, and Supplies	6:10
6-106	Buy American Act-Construction Contracts	6:13
	Part 2--Purchases in the Republic of Panama	
6-200	Reserved	6:14
	Part 3--Appropriations Act Restrictions	
6-300	Scope of Part	6:15
6-301	Definitions	6:15
6-302	Restriction	6:15
6-303	Exceptions	6:15
6-304	Procedures	6:16
	6-304.1 Acquisition of Food, Clothing, Woven Silk and Woven Silk Blends, Spun Silk Yarn	

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36371

TABLE OF CONTENTS

Paragraph		Page
	for Cartridge Cloth, Synthetic Fabric, or Coated Synthetic Fabric, or Items Containing Mohair or Cotton, or Specialty Metals	6:16
6-304.2	Acquisition of Items Containing Wool (Except Mohair)	6:17
6-305	Contract Clauses	6:19
6-306	Acquisition of Foreign Buses	6:19
6-307	Restriction on R&D Contracting with Foreign Sources	6:20
6-308	Hull and Superstructure of Naval Vessels	6:20
	Part 4--Purchases from Certain Communist Areas	
6-401	General Policy	6:21
6-402	Exceptions	6:21
6-403	Procedures	6:21
	Part 5--Canadian Purchases	
6-501	Mutual Canadian-American Interests	6:22
6-502	Agreement With Government of Canada	6:22
6-503	Guarantee by Canadian Government	6:23
6-504	Procedures for Canadian Purchases	6:23
6-504.1	Bidding Procedures	6:23
6-504.2	Contracting Procedures	6:24
6-504.3	Termination Procedures	6:25
6-504.4	Acceptance of Canadian Supplies	6:25
6-504.5	Industrial Security	6:25
6-505	Contract Administration	6:25
	Part 6--Duty and Customs	
6-601	Scope of Part	6:26
6-602	Policy	6:26
6-603	Emergency Purchases of War Materials Abroad	6:26
6-603.1	Definition	6:26
6-603.2	Requirements	6:27
6-603.3	Contract Clauses	6:28
6-603.4	Customs Entries and Duty-Free Certificates	6:28
6-603.5	Immediate Release Permits	6:29
6-604	Supplies for Vessels or Aircraft Operated by the U.S.	6:30
6-605	Reserved	6:30
	Part 7--Military Assistance Program Acquisitions	
6-700	Scope of Part	6:31
6-701	Reserved	6:31

TABLE OF CONTENTS

Paragraph		Page
6-702	Statutory Requirements	6:31
6-703	Procedures	6:31
6-703.1	Applicability	6:31
6-703.2	Method of Purchase	6:31
6-703.3	Certificate	6:31
6-703.4	Contract Clause	6:31
6-704	Exemption from Examination of Records Requirement	6:32
6-704.1	General	6:32
6-704.2	Department of Defense Audit and Records	6:32
	Part 8--Balance of Payments Program	
6-800	Scope of Part	6:33
6-801	Prohibition Against Fragmenting Acquisitions	6:33
6-802	Real Property Construction, Repair and Maintenance	6:33
6-803	Supply and Service Contracts	6:33
6-803.1	Procedure	6:33
6-803.2	Exceptions	6:35
6-804	Identification of Expenditures in the United States	6:39
	Part 9--International Agreements and Coordination	
6-901	Scope of Part	6:40
6-902	International Agreements	6:40
6-903	Coordination With Overseas Commands and Activities	6:40
	Part 10--Exclusion of Examination of Records Clause	
6-1000	Scope of Part	6:41
6-1001	Statutory Requirements	6:41
6-1002	Policy	6:41
6-1003	Requests for Determinations and Findings	6:41
6-1004	Determination and Findings	6:41
	Part 11--Use of United States-Owned Foreign Currency for Payments	
6-1101	Scope of Part	6:43
6-1102	Applicability	6:43
6-1103	Definitions	6:43
6-1104	Solicitation Procedure	6:43
6-1105	Evaluation of Offers	6:44
6-1105.1	Conversion for Evaluation Purposes	6:44
6-1105.2	Excess Foreign Currency Offers	6:44
6-1105.3	Near-Excess Foreign Currency Offers	6:44
6-1105.4	Consideration of Combination Offers	6:44
6-1105.5	Evaluation Table	6:45

TABLE OF CONTENTS

Paragraph		Page
6-1106	Awards	6:46
6-1106.1	Basis	6:46
6-1106.2	Awards by the Contracting Officer	6:46
6-1106.3	Awards Requiring Approval by Higher Authority	6:46
6-1107	Determinations of Nonfeasibility and Contract Certifications	6:47
6-1108	Criteria for Nonfeasibility Determinations	6:47
6-1109	Excess and Near-Excess Currency Countries	6:47
6-1110	Contracts With Domestic Concerns	6:47
	Part 12--Use of Local Currency in Payment of Foreign Contracts	
6-1200	Policy	6:49
	Part 13--Acquisitions for Foreign Military Sales	
6-1300	Scope of Part	6:50
6-1301	Applicable Statutory Provisions	6:50
6-1301.1	Contract Authorization	6:50
6-1301.2	Commercial Availability	6:50
6-1302	Applicability	6:51
6-1303	Preparation of DoD Offer and Acceptance (DD Form 1513)	6:51
6-1303.1	DD Form 1513	6:51
6-1303.2	Procedures	6:51
6-1304	Pricing Acquisitions for Foreign Military Sales	6:51
6-1304.1	General	6:51
6-1304.2	Commercial Sales to Foreign Customers	6:52
6-1304.3	Cost of Doing Business With a Foreign Government or International Organization	6:52
6-1304.4	Government-to-Government Agreements	6:53
6-1305	Sales Commissions and Contingent Fees on Foreign Military Sales	6:53
6-1305.1	Scope of this Paragraph	6:53
6-1305.2	Policy	6:53
6-1305.3	DoD Offer and Acceptance Procedures	6:54
6-1305.4	Applicability and Allowability of Sales, Commissions or Fees	6:55
6-1305.5	Contracting Procedures Relating to Sales, Commissions and Fees	6:55
6-1305.6	Special County Requests with Respect to Sales Commissions and Fees	6:56
6-1306	Recovery of Nonrecurring Costs	6:56
6-1306.1	Policy	6:56
6-1306.2	Applicability	6:56
6-1306.3	Procedures	6:57

TABLE OF CONTENTS

Paragraph		Page
6-1307	Source Selection	6:57
6-1308	Limitation of Liability	6:57
6-1309	Exercise of Options for Foreign Military Sales	6:57
6-1310	Implementation of Offset Arrangements Negotiated Pursuant to Foreign Military Sales Agreements	6:57
6-1310.1	Scope of Paragraph	6:57
6-1310.2	General	6:58
6-1310.3	Procedures	6:58
6-1311	Use of Government Production and Research Property on Work for Foreign Governments or International Organizations	6:61
6-1312	Exclusionary Policies and Practices of Foreign Governments	6:61
6-1313	Nonapplicability of 49 U.S.C. 10721 Rates On FMS Shipments	6:61
6-1314	Reserved	6:61
6-1315	FMS/Offset Arrangements	6:61
6-1315.1	Australian Memorandum of Discussion	6:61
6-1315.2	Swiss F-5 Agreement	6:63
6-1316	Reserved	6:65
	Part 14--Purchases from NATO Participating Country Sources	
6-1400	Scope of Part	6:66
6-1401	Policy	6:66
6-1402	MOUs With NATO Participating Countries	6:66
6-1403	Procedures for Purchases from Participating Countries	6:66
6-1403.1	Solicitation Procedures	6:66
6-1403.2	Subcontracting With Participating Country Sources	6:69
6-1403.3	Required Clause	6:69
6-1403.4	Industrial Security for Participating Countries	6:69
6-1404	Contract Administration	6:69
6-1405	List of Excluded Items	6:69
6-1406	Participating Country Agreements, Memoranda of Understanding and Accompanying Annexes	6:73
6-1406.1	Canadian Agreements	6:73
6-1406.1(a)	Letter of Agreement With Canada	6:73
6-1406.1(b)	Cooperative Agreement With Canada	6:77
6-1406.2	United Kingdom Memorandum of Understanding	6:81
6-1406.3	Norway Memorandum of Understanding	6:94
6-1406.4	Netherlands Memorandum of Understanding	6:102
6-1406.5	Federal Republic of Germany Memorandum of Understanding	6:113
6-1406.6	Italy Memorandum of Understanding	6:118
6-1406.7	Portugal Memorandum of Understanding	6:125

TABLE OF CONTENTS

Paragraph		Page
6-1406.8	Belgium Memorandum of Understanding	6:136
6-1406.9	Denmark Memorandum of Understanding	6:143
6-1407	Reserved	6:148
	Part 15--Purchases from Defense Cooperation Country Sources	
6-1500	Scope of Part	6:149
6-1501	Policy	6:149
6-1502	Procedures for Purchases from Offset Arrangement Sources	6:149
6-1502.1	Solicitation Procedures	6:149
6-1502.2	Submission of Offers	6:149
6-1502.3	Evaluation Procedures	6:149
6-1502.4	Other Procedures	6:149
6-1503	Reserved	6:150
6-1504	Defense Cooperation Country Agreements and Annexes	6:150
6-1504.1	Israel Memorandum of Agreement	6:150

SECTION VI

FOREIGN ACQUISITIONS

6-000 Scope of Section. This Section includes restrictions and procedures affecting acquisitions of foreign-made items; restrictions on purchases from Communist countries or areas; procedures affecting acquisitions from Canadian sources; guidance on the use of duty-free entry procedures for foreign items; special guidance (including pricing guidance) for Military Assistance Program acquisitions and Foreign Military Sales; procedures to promote liaison with overseas activities and compliance with government-to-government agreements for acquisition from foreign contractors; procedures for use of U.S.-owned foreign currency for payment of contracts; and procedures for the solicitation and evaluation of offers of defense equipment which are qualifying country end products.

6-001 Definitions. As used throughout this Section, the words and terms defined in this paragraph shall have the meanings set forth below unless a different definition is prescribed for a specific Part.

6-001.1 End Products.

(a) End products means articles, materials, and supplies that are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery.

(b) Defense cooperation agreement country end product means an item listed in the defense cooperation country agreement and produced in that country.

(c) Domestic end product means (i) an unmanufactured end product which has been mined or produced in the United States, or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (6-103.3).

(d) Foreign end product means an end product other than a domestic end product.

(e) FMS/offset arrangement country end product means (i) an unmanufactured end product mined or produced in a FMS/offset arrangement

country, or (ii) an end product manufactured in a FMS/offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is in fact paid. To obtain the waivers necessary to accord preferential treatment for a FMS/offset arrangement country end product, see the procedures at 6-1310.3(b)(1).

(f) Participating country end product means (i) an unmanufactured end product mined or produced in a participating country, or (ii) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is in fact paid.

(g) Qualifying country end product means (i) a participating country end product; (ii) a FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (iii) a defense cooperation country agreement listed item.

6-001.2 Components.

(a) Components means those articles, materials, and supplies, which are directly incorporated in end products.

(b) Qualifying country component means (i) an item mined, produced, or manufactured in a participating country or in a FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (ii) any item listed in a defense cooperation country agreement.

6-001.3 Defense equipment means any equipment, item of supply, component, or end product purchased by the Department of Defense.

6-001.4 Source (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

6-001.5 Countries.

(a) A defense cooperation country is a foreign country which has a defense cooperation agreement and for which a Determination and Findings was made by the Secretary of Defense waiving the Buy American Act restrictions for a list of mutually agreed items. These countries are listed at 6-1504.

(b) A FMS/offset arrangement country is a foreign country which has an offset arrangement negotiated in conjunction with a Foreign Military Sale and which arrangement provides for obtaining a waiver of the Buy American Act restrictions on a case by case basis. These countries are listed at 6-1310.1.

(c) A participating county is a NATO country which has a Memorandum of Understanding (MOU) or similar agreement with the U.S. and for which a blanket Determination and Finding was made by the Secretary of Defense waiving the Buy American Act restrictions. These countries are listed at 6-1401.

(d) Qualifying country is any country defined in (a), (b), and (c) above.

(e) United States means the States, the District of Columbia, Puerto Rico and possessions (see 1-201.12). It does not include leased bases or trust territories.

6-001.6 Offer.

(a) Defense cooperation country offer means an offer of a defense cooperation country end product including transportation to destination.

(b) Domestic offer means an offer of a domestic end product, including transportation to destination.

(c) FMS/offset arrangement country means an offer of a FMS/offset arrangement country end product, including transportation to destination.

(d) Foreign offer means an offer that is not a domestic offer. It includes transportation to destination and duty (whether or not a duty-free entry certificate may be issued).

(e) Participating country offer means an offer of a participating country end product including transportation to destination.

(f) Qualifing country offer means an offer of a qualifying country end product including transportation to destination.

6-001.7 Concern.

(a) Domestic concern means an incorporated concern incorporated in the United States or an incorporated concern having its principal place of business in the United States. (In the context of this Section, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

(b) Foreign concern means a concern that is not a domestic concern.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

Part 1--Buy American Act--Supply Contracts

6-100 Scope of Part. This Part implements the Buy American Act (41 U.S.C. 10a-d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to supply contracts and to services which require the furnishing of end items (e.g., leasing of equipment). The Buy American Act does not otherwise apply to the purchaser of services.

6-101 Reserved.

6-102 General.

6-102.1 Buy American Act Requirements. Except as provided in 6-103, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The Act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 6-104.4.

6-102.2 Balance of Payments Program Requirements.

(a) The 50 percent evaluation factor in favor of domestic offers, implemented in 6-104.4, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50 percent factor beyond the time when the U.S. balance of payments deficit is corrected.

(b) Although the evaluation procedures in 6-104.4 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one which precisely obtains in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see 1-109) from the evaluation procedures of 6-104.4 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Under Secretary of Defense Research and Engineering (USDRE) or his designee.

6-102.3 Acquisition From, Through, or For Other Government Agencies. In acquisitions from or through other Government agencies, responsibility for compliance with the Buy American Act and Balance of Payments Program evaluation procedures (see 6-104.4) is as follows:

(a) The General Services Administration has responsibility for compliance with the Buy American Act for foreign end items acquired by Defense activities from GSA stores depots, direct purchases for such activities, or purchases from a mandatory Federal Supply Schedule which does not include any domestic source for that item. Balance of Payments evaluation procedures are not applicable to these transactions.

(b) Defense activities have the responsibility for compliance with the Buy American Act and Balance of Payments evaluation procedures when they purchase a foreign end item from (i) a mandatory Federal Supply Schedule which includes a domestic end product, or (ii) a nonmandatory Federal Supply Schedule.

(c) Defense activities purchasing items of equipment and supplies for civil works projects for use in the United States by civil agencies or departments shall not apply the Balance of Payments Program 50 percent evaluation factor when evaluating offers; only the evaluation factors of the Buy American Act, as implemented by Executive Order 10582, dated 17 December 1954, shall be applied.

(d) In the case of coordinated acquisition under Section V, Part II, compliance with the Buy American Act and Balance of Payments evaluation procedures is the responsibility of the Contracting Department except when the Requiring Department specifies a foreign end product; in which case, the determination that a domestic end product is not available, including consideration of foregoing the acquisition or providing a U.S. substitute, shall be the responsibility of the Requiring Department (see 5-1106.3(b)).

6-103 Exceptions.

6-103.1 Use Outside the United States. The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States. However, the Balance of Payments Program is not so restricted. In order to uniformly implement the Balance of Payments Program worldwide, the preferences and procedures of the Buy American Act for soliciting and awarding contracts for supplies and applicable services have been extended as a matter of policy to acquisitions of supplies and applicable services for use outside the United States (see Section VI, part 8).

6-103.2 Nonavailability in the United States.

(a) The Buy American Act does not apply to (i) end products of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (ii) components of end products manufactured in the United States or a qualifying country if the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Certain items determined to be exempt under these exceptions are set forth in 6-105.

(b) A nonavailability determination is not required for end products or components listed in (c) below or in 6-105. Otherwise, acquisitions of foreign end products or components on the basis of nonavailability shall be made only after a determination of nonavailability has been made and the acquisition is approved:

(i) at a level above the contracting officer, if the amount involved is estimated not to exceed $25,000;

(ii) by the chief of the contracting office concerned, if the acquisition is estimated not to exceed $250,000;

(iii) by the head of the contracting activity (HCA) or his immediate deputy or in the case of the Defense Advanced Research Projects Agency (DARPA), the Director, DARPA, if the acquisition is estimated not to exceed $2 million; or

(iv) by the Secretary of the Department concerned, or his designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

In making such determination, and granting such approval, the feasibility of foregoing the requirement or providing a U.S. substitute shall be considered.

(c) Acquisitions in the following categories may be made without determinations or approvals otherwise required by this 6-103.2:

(i) Spare and replacement parts, if the acquisition must be restricted to the original manufacturer or his supplier in accordance with 1-313;

(ii) Foreign drugs by the Defense Personnel Support Center where the Chief of the Division of Technical Operations, Directorate of Medical Materiel, has determined that only the requested foreign drug will fulfill the requirements;

(iii) Swords and scabbards; and

(iv) Books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which domestic editions are not available.

6-103.3 Unreasonable Cost or Inconsistency With the Public Interest. The restrictions of the Buy American Act and the Balance of Payments Program (see 6-102.2) do not apply when it is determined by the Secretary concerned (a) that the cost of a domestic end product would be unreasonable (see 6-104.4(b)) or (b) that acquisition of a domestic end product would be inconsistent with the public interest.

6-103.4 Scrap. Scrap generated in, collected in, and prepared for processing in the United States shall be considered as of domestic origin.

6-103.5 Reserved.

6-103.6 Reserved.

6-103.7 Commissary Resale. The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. However, nonsubsistence items of foreign origin purchased for resale in domestic commissaries must meet the evaluation criteria in 6-104.4.

6-104 Procedures.

6-104.1 Applicability. The following procedures apply to all contracts involving the acquisition of defense equipment including contracts exclusively for articles, materials, or supplies for use outside the United States.

6-104.2 Solicitation of Offers.

(a) Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 6-105) is available to prospective contractors upon request. When only domestic end products are acceptable, the solicitation shall so state (e.g., see 6-104.4(d)).

(b) When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable other than those items which have been excepted either on a blanket or an individual basis (see 6-103.2 and 6-105), or the price for the offered foreign end product meets the evaluation criteria in 6-104.4.

6-104.3 Reserved.

6-104.4 Evaluation of Offers.

(a) In accordance with the Buy American Act, the Secretary of Defense has determined that where the procedures in (b) below result in the acquisition of foreign end products, the acquisition of domestic end products would be (i) unreasonable in cost or (ii) inconsistent with the public interest. (See 6-103.3.)

(b) Except as provided in this subparagraph (b) and in (d) and (f) below, offers shall be evaluated so as to give preference to domestic offers as follows:

(1) Each nonqualifying country offer of defense equipment (but see exception (ii) below) shall be adjusted for purposes of evaluation either by excluding any duty from the nonqualifying country offer and adding 50 percent of the offer (exclusive of duty) to the remainder, or by adding to the nonqualifying country offer (inclusive of duty) a factor of 6 percent of that offer, whichever results in the greater evaluated price, except that a 12-percent factor shall be used instead of the 6-percent factor if (i) the firm submitting the low acceptable domestic offer is a small business concern, or a labor surplus area concern, or both, (ii) small purchase procedures (see Section III, Part 6) are not used, and (iii) any contract award to a domestic concern which would result from applying the 12-percent factor, but which would not result from applying the 6-percent or 50-percent factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12-percent factor is applied, but would not be made if the 6-percent or 50-percent factor is applied, the matter shall be submitted to the Secretary of the Department concerned for decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest. (See 6-103.3.) If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In other instances, use the tie-breaking procedures in 2-407.6. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the solicitation specifically provides that award may be made on a particular group of items.

(2) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph 6-104.4, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example E below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example F

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36377

below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example G below).

(c) The following examples illustrate how the procedure in (b) above should be applied. Throughout these examples, "domestic offer--large" means a domestic offer which is not from a small business or labor surplus area concern, "domestic offer--small" means a domestic offer which is from either a small business concern or a labor surplus area concern or both.

EXAMPLE A

Nonqualifying Country Offer, including duty of $4,500.....$14,500
Domestic Offer--Large..... 15,100
Domestic Offer--Small..... 15,110

Award on Domestic Offer--Large. Domestic Offer--Small is out because it is not the low acceptable domestic offer. Nonqualifying Country Offer, if adjusted by the 50-percent factor, would be $14,500 less $4,500 duty, (i.e., $10,000), plus 50-percent of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6-percent factor, it would be $14,500 plus 6 percent of $14,500 (i.e., $870), or $15,370; therefore, the 6-percent factor is added and Domestic Offer--Large is the low evaluated offer.

EXAMPLE B

Nonqualifying Country Offer, including duty of $2,000.....$12,000
Domestic Offer--Large..... 15,000

Award on Domestic Offer--Large. Nonqualifying Country Offer, adjusted by 50-percent factor, is $15,000; adjusted by 6-percent factor, it is $12,720. Therefore, Nonqualifying Country Offer is evaluated at $15,000, resulting in a tie and consequent award on the Domestic Offer--Large.

EXAMPLE C

Nonqualifying Country Offer, including duty of $3,500.....$13,500
Domestic Offer--Large..... 17,000
Domestic Offer--Small..... 15,100

Award on Domestic Offer--Small. Nonqualifying Country Offer, adjusted by 50-percent factor is $15,000; adjusted by 12-percent factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the Domestic Offer--Small.

EXAMPLE D

Nonqualifying Country Offer, including duty of $70,000.....$270,000
Domestic Offer--Large..... 310,000
Domestic Offer--Small..... 302,000

Submit the case to the Secretary of the Department concerned. Nonqualifying Country Offer, adjusted by 50-percent factor is $300,000; adjusted by 12-percent factor, it is $302,400; adjusted by 6-percent factor, it is $286,200. Therefore, Domestic Offer--Small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires Secretarial decision.

EXAMPLE E

Nonqualifying Country Offer, including duty of $2,000.....$8,000
Domestic Offer - Large.....10,500
Domestic Offer - Small..... 8,900
Qualifying Country Offer..... 8,800

Award on Qualifying Country Offer. Nonqualifying Country Offer, adjusted by 50-percent factor is 9,000; adjusted by 12-percent factor it is 8,960. Therefore, it is evaluated at $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE F

Nonqualifying Country Offer, including duty of $2,000.....$8,000
Domestic Offer - Large.....10,500
Domestic Offer - Small..... 9,500
Qualifying Country Offer 8,800

Award on Nonqualifying Country Offer. Nonqualifying Country Offer, adjusted by 50-percent factor is $9,000; adjusted by 12-percent factor it is 8,960. Therefore it is evaluated at $9,000 which is still lower than both domestic offers. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offers had never been submitted and the award is made on the nonqualifying country offer.

EXAMPLE G

Nonqualifying Country Offer.....$10,000
Qualifying Country Offer..... 11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis and the award is made on the nonqualifying country offer.

(d) Where a qualifying country offer is received for defense equipment listed in 6-1405 or 1-2207, rejection of that offer in the interest of protecting the domestic mobilization base is required except when the quantity for which the offer is made has been identified as a quantity in excess of that required to maintain the U.S. defense mobilization

base for those items. In those instances where it has been determined prior to solicitation that the item is not to be supplied from any foreign source, offerors shall be so notified in the solicitation. Where rejection of a qualifying country offer is contemplated for reasons of national interest or for mobilization base considerations and the defense equipment involved is not listed in 6-1405 or 1-2207, a copy of the proposed decision shall be forwarded to OUSDRE(AP) (International Acquisition), 10 working days in advance of issuance of the rejection.

(e) When proposed awards are submitted for Secretarial decision pursuant to (b) above, each submission shall include a copy of each offer being considered for award, the date the offer expires, including extensions, a copy of the abstract of bids or proposals, and a statement justifying the proposed awards. Submissions should be forwarded to allow 21 days for processing and Secretarial consideration, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(f) When performing the evaluation in (b) above for items for civil works activities, offers of qualifying country end products shall not be subject to the 50-percent evaluation factor of the Balance of Payments Program, but shall be subject to the 6-percent and 12-percent evaluation factors of the Buy American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of 6-103.3.

6-104.5 Clauses. Except for simplified small purchase procedures, insert the clauses at 7-103.10, 7-104.3, 7-104.32, 7-104.106, and 7-2003.47 in accordance with the instructions for their use. If requested, the contracting officer should advise the offeror of the effect of the required clauses.

6-104.6 Reserved.

6-105 List of Excepted Articles, Materials, and Supplies. Pursuant to the Buy American Act, it has been determined that the articles, materials, and supplies listed below, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. When required to be incorporated into (i) an end product or construction material manufactured in the United States, or (ii) a qualifying country end product or construction material, these items or components may be regarded as being of domestic origin. (See 6-001, or for construction material, 18-506.4).

Acetylene black
Asbestos, amosite
Bananas
Beef extract
Bismuth
Brazil nuts, unroasted
Cadmium, ores and flue dust
Calcium cyanamide
Capers
Cashew nuts
Chestnuts

Chicle
Chrome ore or chromite
Cinchona bark
Cobalt, in cathodes, rondelles, or other primary forms.
Cocoa beans
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean
Cork, wood or bark and waste
Diamonds, industrial stones
Emetine, bulk
Ergot, crude
Fair linen, altar
Fibers of the following types: Abace, agave, coir, flax, jute, and palmyra.
Goat and kid skins
Graphite, natural
Hand sewing needles
Hemp yarn
Hog bristles for brushes
Hyoscine, bulk
Ipecac, root
Leather, sheepskin, hair-type
Menthol, natural bulk
Mica
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts
Nitroguanidine (also known as picrite)
Olive oil
Olives (green), pitted or stuffed in bulk
Opium, crude
Petroleum, crude oil; unfinished oils and finished products (See definitions below)
Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars
Pyrethrum flowers
Quartz crystals
Quebracho
Radium salts
Rosettes
Rubber, crude and latex
Rutile
Silk, raw
Sperm oil
Spices and herbs in bulk
Sugars, raw (Part 3 of Section VI, however, applies)
Talc, block, steatite
Tantalum
Tapioca flour and cassava
Tartar, crude; tartaric acid and cream of tartar in bulk
Tea in bulk

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36379

Thread, metallic (gold)
Tin
Vanilla beans
Venom, cobra
Wax, carnauba
Woods of the following species: Angelique, balsa, okki, greenheart, lignum vitae, mahogany and teak

Petroleum Definitions, as used in this Part

(a) Crude oil means crude petroleum as it is produced at the wellhead and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons which existed in a vaporous phase in a reservoir and that are not natural gas products.

(b) Finished products means any one or more of the following petroleum oils, or a mixture or combination of such oils, which are to be used without further processing except blending by mechanical means:

(i) liquefied gases--hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures;

(ii) gasoline--a refined petroleum distillate which by its composition, is suitable for use as a carburant in internal combustion engines;

(iii) jet fuel--a refined petroleum distillate used to fuel jet propulsion engines;

(iv) naphtha--a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes;

(v) fuel oil--a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, residues;

(vi) lubricating oil--a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces;

(vii) residual fuel oil--a topped crude oil or viscous residuum, which, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil-F-859 for Navy Special Fuel Oil and any other more viscous fuel oil, such as No. 5 or Bunker C;

(viii) asphalt--a solid or semisolid cementitious material, which gradually liquefies when heated, in which the predominating constituents are bitumins, and which is obtained in refining crude oil;

(ix) natural gas products--liquids (under atmospheric conditions), including natural gasoline, which are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and which, when recovered and without processing

in a refinery, otherwise fall within any of the definitions of products contained in (ii) through (v), inclusive, of this paragraph (b).

(c) Unfinished oils means one or more of the petroleum oils listed in (b) above, or a mixture or combination of such oils, which are to be further processed other than by blending by mechanical means.

6-106 Buy American Act-Construction Contracts. See Section XVIII, Part 5.

Part 2—Reserved

6-200 Reserved.

Part 3—Appropriations Act Restrictions

6-300 Scope of Part. This Part implements the Defense Appropriations Act restriction on the availability of appropriated funds for the acquisition of any article of food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or specialty metals. However, reference should be made to the current Department of Defense Appropriations Act as a check on the current applicability of such restriction. This Part also implements the restriction on acquisition of foreign buses contained in Section 404 of Public Law 90-500 (see 6-306), and the restriction on R&D contracting with foreign sources contained in Section 744 of Public Law 92-570 (see 6-307), and the restriction for the construction of major components of the hull or superstructure of any naval vessel or the construction of any naval vessel in foreign shipyards (see 6-308). Nothing herein shall affect the applicability of the Buy American Act or the Balance of Payments Program (see Parts 1 and 8 of this Section).

6-301 Definitions. As used in this Part, the following terms have the meaning set forth below.

(a) Possessions. As used in the phrase "United States or its possessions", the term "possessions" includes Puerto Rico.

(b) United States means the States and the District of Columbia.

(c) Specialty metals means:

(i) steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

6-302 Restriction. Except as provided in 6-303, there shall not be acquired supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, which have not been grown or produced in the United States or its possessions; or specialty metals, including stainless steel flatware which have not been melted in steel manufacturing facilities located within the United States or its possessions but this does not restrict the acquisition of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

6-303 Exceptions. The restriction of 6-302 does not apply to the following:

(i) acquisitions outside the United States in support of combat operations;

(ii) acquisitions by vessels in foreign waters;

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36661

(iii) emergency acquisitions or acquisitions of perishable foods by establishments located outside the United States for the personnel attached thereto;

(iv) acquisitions of those supplies listed in 6-105 as to which the list does not make this Part expressly applicable;

(v) small purchases (for the purpose of this exception, a small purchase shall mean an acquisition action, as distinguished from a single line item, involving a total dollar amount not in excess of $10,000);

(vi) acquisitions of end items incidentally incorporating cotton, or wool, of which the estimated value is not more than 10 percent of the total price of the end item; Provided, That the estimated value does not exceed $10,000 or 3 percent of the total price of the end item, whichever is greater;

(vii) any articles of food or clothing of any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool, as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(viii) supplies purchased specifically for commissary resale (see 6-103.7);

(ix) purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(x) purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons and ammunition (see 7-104.93 (a)); and

(xi) purchases of specialty metals (see 7-104.93(b)) or chemical warfare protective clothing (see 7-104.13) when such purchases are necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements or where such acquisition is in furtherance of an agreement with a qualifying country (see e.g., 6-001).

6-304 Procedures.

6-304.1 Acquisition of Food, Clothing, Woven Silk and Woven Silk Blends, Spun Silk Yarn for Cartridge Cloth, Synthetic Fabric, or Coated Synthetic Fabric, or Supplies containing Mohair or Cotton, or Specialty Metals. Except as permitted by 6-303, food, clothing (not covered by 6-304.2), woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, any form of mohair or cotton, or specialty metals including stainless steel flatware will be

acquired, only if grown, reprocessed, reused, melted, or produced in the United States or its possessions.

6-304.2 Acquisition of Items Containing Wool (Except Mohair).

(a) The Secretaries have determined that to the extent that application of the procedures in this subparagraph 6-304.2 results in the acquisition of any articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions, a satisfactory quality and sufficient quantity of such articles grown, reprocessed, reused, or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices.

(b) Offers for supplies of which wool is a part will be solicited on the following alternative bases:

(i) manufactured in the United States or its possessions from domestic wool;

(ii) manufactured in the United States or its possessions from foreign wool; and

(iii) manufactured in the United States or its possessions from a blend of (percent) domestic wool and (percent) foreign wool.

(c) Each solicitation for supplies of which wool is a component part will contain the provision in 7-2003.48. The evaluation factor will be computed in accordance with (f) below, and the amount of the factor will be inserted in place of the blank in (c) of the provision in 7-2003.48.

(d) If, on the date of opening of offers, the average market price of domestic wool of usable grades is no more than 10 percent above the average of the prices of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications (see (f) below), which prices reflect the current incentive price as established by the Secretary of Agriculture, and if reasonable offers have been received for the advertised quantity offering 100-percent-domestic wools, the contract will be awarded for domestically produced articles using 100-percent-domestic wools and the procedure set forth in (e) and (f) below will be disregarded.

(e) In the evaluation of offers under this Part, an evaluation factor computed in accordance with (f) below will be added to that portion of the offered price that represents foreign wool to be furnished or used in performance of the contract, and award will be made accordingly. In the event that tie offers result from such evaluation, award will be made to the offeror proposing to furnish or use the most domestic wool.

(f) The evaluation factor to be used under (e) above will be 10 percent of the average of the following prices of representative types and grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price of $0.62 per pound grease basis converted to grade and type clean basis.)

Representative Type and Grade

	Price Clean Basis per pound Dollars
Group 1--Grades 60's and finer	
Category 1--Staple, Average and Good French Combing (worsted type)	

The average of the following grades:
Territory Original Bag Wool
Average and Good French Combing, 64's and finer....1.7748
Graded Territory and Texas Wool
Staple and Good French Combing, One-half Blood, 60's/62's.....1.6946
Graded Fleece Wool
Staple and Good French Combing, 64's and finer.....1.7862
Staple and Good French Combing, One-half Blood, 60's/62's.....1.6259

Category 2--Short Average and Good French Combing and Clothing (woolen type)
The average of the following grades:
Territory Original Bag Wool
Short, French Combing and Clothing, fine (64's, not to exceed 15% of 60's/62's).....1.5801
Graded Territory and Texas Wool
Average and Good French Combing, One-half Blood, 60's/62's.....1.6145
Graded Fleece Wool
Average and Good French Combing, 64's and finer....1.7061
Average and Good French Combing, One-half Blood, 60's/62's.....1.5343

Group 2--Grades 50's-60's

Category 3--Staple and Good French Combing (worsted)
The average of the following grades:
Graded Territory and Texas Wool
Staple and Good French Combing, Three-Eighths Blood, 56's/58's.....1.4656
Staple and Good French Combing, 50's/48's, One-Quarter Blood.....1.3397
Graded Fleece Wool
Staple and Good French Combing, Three-Eighths Blood, 56's/58's.....1.3626
Staple and Good French Combing, 50's/48's, One-Quarter Blood.....1.2710

Category 4--Average French Combing (woolen type)
The average of the following grades:
Graded Territory and Texas Wool
Average French Combing, Three-Eighths Blood, 56's/58's.....1.3053
Average French Combing, 50's/48's, One-Quarter Blood.....1.2023
Graded Fleece Wool
Average French Combing, Three-Eighths Blood 56's/58's.....1.2137
Average French Combing, 50's/48's, One-Quarter Blood.....1.0878

Group 3--Grades Below 50s

Category 5--Staple and Good French
The average of the following grades:
Graded Fleece Wool
Low One-Quarter Blood, 46's, 4 inches or more in length.....1.1565
Common and Braid, 44's/36's, 5 inches or more in length.....1.0763

(g) See Section VI, Part 11, for procedures for using U.S.-owned foreign currency for payment of contracts for foreign-end products.

6-305 Contract Clauses. See 7-104.13 and 7-104.93.

6-306 Acquisition of Foreign Buses. Section 404 of the Act of September 20, 1968 (Public Law 90-500), the Department of Defense Appropriation Authorization Act for Fiscal year 1969, provides that:

> "No funds authorized for appropriation for the use of the Armed Forces of the United States under the provisions of this Act or the provisions of any other law shall be available for the purchase, lease, rental, or other acquisition of multipassenger motor vehicles (buses) other than multipassenger motor vehicles (buses) manufactured in the United States, except as may be authorized by regulations promulgated by the Secretary of Defense solely to insure that compliance with this prohibition will not result in either an uneconomical procurement action or one which would adversely affect the national interests of the United States."

The objective of this statutory provision is to assure that only buses manufactured in the United States shall be used to satisfy requirements of United States Armed Forces located throughout the world for bus transportation, where such buses are available and where their use would not be uneconomical or contrary to the national interests of the United States. It should be applied whether the buses are purchased, leased, rented, or made available under contracts for transportation services. The use of foreign manufactured buses is authorized where the Head of the Contracting Activity determines that the use of U.S.-manufactured buses would be uneconomical or would adversely affect the national interests of the United States. However, foreign buses may be acquired without such determination in the following circumstances:

(i) When U.S.-manufactured buses are not available in time to satisfy requirements which cannot be postponed, foreign-manufactured buses may be used for a temporary period of time but not to exceed the lead time required for acquisition and delivery of U.S.-manufactured buses.

(ii) When the requirement for buses is of a temporary nature to meet a special but nonrecurring requirement or where a

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36393

recurring requirement is sporadic and infrequent, foreign-manufactured buses may be used for the temporary periods of time not to exceed the period of time needed to meet the nonrecurring or the recurring infrequent requirement.

(iii) When foreign-manufactured buses are made available at no direct or indirect acquisition cost to the U.S. Government, foreign-manufactured buses may be used.

6-307 Restriction on R&D Contracting with Foreign Sources.

(a) Section 744 of the Defense Appropriations Act for FY 1973 (Public Law 92-570) provides that no funds appropriated for the Department of Defense are available for entering into any contract or agreement with any foreign corporation, organization, person, or other entity for the performance of research and development in connection with any weapon system or other military equipment for the Department of Defense when there is a U.S. corporation, organization, person, or other entity equally competent to carry out such research and development and willing to do so at a lower cost.

(b) The above provision does not change the rules for the selection of research and development contractors set forth in Section IV, Part 1, (see in particular 4-102 and 4-106). However, when a U.S. and a foreign source are considered equally competent, the contracting officer will make a determination as to which of the sources will provide the services required at the lowest estimated cost to the Government. Criteria for evaluating cost estimates are contained in 4-106.5.

6-308 Hull and Superstructure of Naval Vessels. Each year the Department of Defense Appropriations Authorization Act contains the Burns-Tollefson Amendment which reads:

> "Provided, That none of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel: Provided further, That none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards."

This Amendment is incorporated into the Department of Defense Appropriations Act each year and is located under Shipbuilding and Conversion, Navy.

Part 4--Purchases from Certain Communist Areas

6-401 General Policy. It is the general policy of the Department of Defense that supplies which originated in, were located in, or were transferred from or through the communist areas of North Korea, Vietnam, or Cuba (except supplies which have been lawfully imported into the United States, its possessions, or Puerto Rico), shall not be acquired for public use, notwithstanding the provisions of any Part of this Section, and that Government contractors and subcontractors shall not acquire for use in the performance of any Government contract or subcontract thereunder any supplies or services originating from such Communist areas.

6-402 Exceptions.

(a) Supplies from the Communist areas of North Korea, Vietnam, or Cuba may be acquired only in unusual situations; for example, in an emergency or when the supplies are not available from any other source and a substitute supply is not acceptable. For small purchases (as defined in Section III, Part 6), the contracting officer shall determine that there is need for an exception in accordance with Departmental procedures. For other than small purchases, an exception shall be approved by the Secretary of the Department concerned. Before granting an exception for other than small purchases, the Secretary concerned shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs); however, such advice is not required in emergency purchases or where supplies are not available from any other source and substitute supplies are not acceptable.

(b) For procedures for using U.S.-owned foreign currency for payment of contracts for foreign and products, see Section VI, Part 11.

6-403 Procedures.

(a) With respect to contracts for supplies, services, or construction when acceptance is to take place within the United States, its possessions, or Puerto Rico, the contracting officer shall assume that any supplies not produced in the United States have been lawfully imported into the United States and, consequently, that the requirements of this Part have been met.

(b) In all contracts for supplies, services, or construction when acceptance is to take place outside the United States, its possessions, or Puerto Rico, insert the clause in 7-103.15; except that the clause need not be included as provided in 6-402.

(c) Additional restrictions pertaining to the acquisition of steel mill products containing chromium are set forth in Section VI, Part 3.

Part 5--Canadian Purchases

6-501 Mutual Canadian-American Interests. Because of the close geographical proximity of the United States and Canada and because of the mutual interest of both nations in the defense of North America, various steps have been taken during and since World War II to coordinate their economic efforts in the common defense, so as to achieve:

(i) greater integration of military production,
(ii) greater standardization of military equipment,
(iii) wider dispersal of production facilities,
(iv) establishment of supplemental sources of supply, and
(v) greater flow of defense supplies and equipment between the two countries.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs of Canada and the United States and to assure Canada a fair opportunity to share in the production of military equipment and materiel involving programs of mutual interest to Canada and the United States and in the research and development connected therewith. Accomplishment of these purposes requires (i) the exemption of the restrictions of the Balance of Payment Program and the Buy American Act with respect to acquisitions for public use of supplies mined, produced, or manufactured in Canada in the manner prescribed in Parts 1 and 8 of this Section; and (ii) the Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, to insert suitable provisions in such contracts, obtaining for the Department of Defense the same production rights, data and information that the Department of Defense would obtain for itself pursuant to the Defense Acquisition Regulation if the Department were placing the contracts with U.S. concerns.

6-502 Agreement With the Government of Canada

(a) The agreement set forth in 6-1406.1(a) dated 27 July 1956, as amended 17 December 1956, 31 May 1957, 6 January 1961, and 15 October 1962, between the Department of Defence Production (Canada) and the Department of Defense sets forth policies and provides for the implementation of procedures with respect to all contracts for supplies and services placed with the Canadian Commercial Corporation (an agency of the Government of Canada) on or after 1 October 1956.

(b) Subsequent to the execution of the agreement referred to in (a) above, the reorganization of the Canadian Government's departments and agencies vested the contracting authority of the former Canadian Department of Defence Production in the Department of Supply and Services. Pursuant to that reorganization, the authority of the Department of Defence Production to enter into cooperative development projects under the Memorandum of Understanding (6-1406.1(b)) is vested in the Canadian Department of Industry, Trade and Commerce.

(c) This agreement (see 6-1406.1(a)) and associated enabling provisions permit Canadian firms, including Canadian Crown corporations, a fair opportunity to participate in the production of defense equipment and materiel involving defense programs of interest to both nations.

(d) A contract with a supplier or contractor located in Canada should normally be made with and administered through the Canadian Commercial Corporation. (See 6-504.2.)

(e) In connection with contracts placed with the Canadian Commercial Corporation, the Department of Supply and Services (Canada) provides without charge to the Defense Departments and Agencies, among other things, such contract administration services as cost and pricing analysis, industrial security, accountability and disposal of Government property, production expediting, compliance with Canadian labor laws, processing of termination claims and disposal of termination inventory, customs documentation, processing of disputes and appeals, and such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier. Additionally, in connection with such contracts, audits, when required, are performed by the Audit Services Bureau, Department of Supply and Services (Canada), and the Department of National Defence (Canada) provides inspection personnel, services and facilities, at no charge to the Defense Departments and Agencies.

6-503 Guarantee by Canadian Government. The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any contracting activity of the U.S. Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

6-504 Procedures for Canadian Purchases.

6-504.1 Bidding Procedures.

(a) Solicitation of Canadian Firms.

(1) Except as provided in (2) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commercial Corporation to the activity having acquisition responsibility for the supplies or services involved.

(2) Canadian planned producers under the Industrial Readiness Planning Program shall be included on bidders mailing lists for their planned items (see 2-205.1(b)).

(3) Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of all Canadian firms solicited shall be sent to the Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A-0S6, Canada.

(4) Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.

(5) Small purchases (see Section III, Part 6) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation (but see 3-603.1(g)).

(b) Submission of Offers.

(1) As indicated in 6-504.2 below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

its acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information: name of the Canadian offeror; confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and a statement that the Corporation shall subcontract 100 percent with the offeror.

(2) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation is authorized to permit Canadian firms to submit offers directly, Provided, That the Canadian offer and the Canadian Commercial Corporation endorsement are both received by the contracting office prior to bid opening or the closing date for receipt of proposals.

(3) All formally advertised bids shall be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(4) All offers and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the offer, elect to quote and receive payment in terms of U.S. currency; in which event, contracts arising therefrom shall provide for payment in U.S. currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates. (See 6-1406.1(a).)

6-504.2 Contracting Procedures.

(a) Individual contracts covering purchases from suppliers located in Canada, except as noted in (b) below, shall be made with the Canadian Commercial Corporation, which has offices located at the Export Supply Centre, 11 Laurier Ave., Hull, Quebec, Canada, (mail address - Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A-0S6 Canada), and at 2450 Massachusetts Ave., N.W., Washington, D.C. 20008. Contracts should normally be awarded to and administered through the Export Supply Centre office in Hull, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to that office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, Provided, however, That the approval of the Corporation shall be obtained on any matters involving changes to the contract.

(b) The general policy in (a) above need not be followed for purchases negotiated for experimental, developmental, or research work under 3-205 or 3-211, unless the contract is for a project under the Defense Development Sharing Program, as outlined in 6-1406.1(b); purchases negotiated under 3-202 for public exigency; purchases negotiated under 3-203 for small purchases; or purchases made by U.S. Defense activities located in the Dominion of Canada.

(c) Prices in the contracts shall identify the type of currency; i.e., United States or Canadian.

6-504.3 Termination Procedures. The Canadian Commercial Corporation will continue to administer contracts that may be terminated by the U.S. contracting officer and settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government in the termination and settlement of Department of Defence Production (Canada) contracts (see 8-216). The U.S. agency administering the contract with the Canadian Commercial Corporation shall render such services as are required by the Canadian Comercial Corporation with respect to settlement of any subcontracts placed in the United States, including disposal of inventory. The settlement of such U.S. subcontracts shall be in accordance with this Regulation.

6-504.4 Acceptance of Canadian Supplies. Under f.o.b.-origin contracts with the Canadian Commercial Corporation where inspection has been performed by the Department of National Defence (Canada), pursuant to paragraph 6 of the Letter of Agreement (6-1406.1(a)), acceptance of supplies or services which are in accordance with the terms of the contract, shall be made by the Department of National Defence (Canada) on behalf of the Defense Departments and Agencies. Signing of the acceptance certificate on the applicable United States Department of Defense inspection and acceptance form shall be considered satisfactory evidence for payment purposes.

6-504.5 Industrial Security. Industrial Security for Canada shall be in accordance with 6-1403.4 and pursuant to the United States-Canada Industrial Security Agreement of 31 March 1952, as amended.

6-505 Contract Administration.

(a) When services are requested from the Defense Contract Administration Services on contracts to be performed in Canada, the request shall be directed to:

DCASMA, Ottawa
6th Floor, Canadian Building
219 Laurier Avenue, West
Ottawa, Ontario, Canada (K1A0S5)

(b) When contract administration is performed in Canada by Defense Contract Administration Services, the paying office activity to be named in the contract for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-All other DoD components) whether payment is in Canadian or U.S. dollars shall be:

Disbursing Office, Defense Contract Administration
Services Region, Cleveland
1240 East 9th St., Anthony J. Celebrezze Federal Building
Cleveland, Ohio 44199

Part 6--Duty and Customs

6-601 Scope of Part.

(a) This Part sets forth policies and procedures for excepting from import duty certain supplies that are imported into the United States in connection with Defense contracts. Ordinarily, duty is payable for the importation of non-Defense supplies obtained outside the United States. Two exceptions to this rule are available to the Department of Defense: "Emergency purchases of war materials abroad" by a Military Department may be imported duty-free pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States; and certain supplies (not including equipment) for vessels or aircraft operated by the United States may be imported duty-free pursuant to 19 U.S.C. 1309. This Part prescribes the uses and limits of these two exceptions.

(b) This Part does not deal with or affect the evaluation of offers of foreign supplies. Rules for such evaluation are in Parts 1, 3, 13, 14, and 15 of this Section. Although the procedures of this Part may require or permit duty-free entry to be accorded foreign supplies in a given case, this in itself neither precludes nor requires the inclusion of duty in evaluating an offer of such supplies.

6-602 Policy. The issuance of duty-free entry certificates in appropriate situations will result in important savings to military appropriations. Such certificates must be limited to carefully selected situations lest they result in unanticipated profits to contractors, especially under fixed-price-type contracts, and involve the Government in administrative expenses outweighing any possible savings to military appropriations. It is DoD policy to use duty-free entry certificates wherever there is reasonable assurance that advantages in the form of savings to military appropriations will outweigh the administrative and other costs of processing duty-free entry certificates and of maintaining controls to verify that the full benefit of the certificates inures to the Government. A contractor which has been awarded a fixed price-type-contract based on providing a domestic end product or component cannot subsequently furnish a foreign end product or component (including a qualifying country end product or component) and receive a duty-free entry certificate in accordance with 7-104.31(b) without an appropriate reduction in contract price.

6-603 Emergency Purchases of War Materials Abroad.

6-603.1 Definition. Any acquisition of foreign supplies constitutes "an emergency purchase of war material" if:

(i) the supplies comprise--

(A) weapons, munitions, aircraft, vessels, or boats;

(B) agricultural, industrial, or other supplies used in the prosecution of war or for the national defense; or

(C) supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of supplies within (A) or (B) above; and

(ii) the acquisition--

(A) is made in time of war or during a national emergency;

(B) is made because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;

(C) is made for the use of U.S. forces abroad or U.S. vessels in foreign waters; or

(D) consists of captured enemy war material, materials requisitioned by U.S. forces abroad, or materials rebuilt from other materials owned by, or turned over to U.S. forces, or materials loaned or given to a Military Department of the U.S. Government under exchange agreements with foreign governments.

6-603.2 Requirements.

(a) To assure that the policy of 6-602 is carried out for emergency purchases of war materials abroad, one or both of the clauses in 6-603.3(a) and (b) shall be included in each negotiated contract in excess of $100,000 unless the minimum dollar limits in 6-603.3 (a) and (b), respectively, apply. Notwithstanding these dollar limits, either or both of the clauses in 6-603.3(a) and (b) may be inserted in any other negotiated contract where the contracting officer determines that to do so would further the policy in 6-602 and would be consistent with the limitations in (b) below, and in any such case the dollar figure in paragraphs (a) and (d) of the clause in 7-104.31(b) may be reduced appropriately.

(b) Duty-free entry certificates shall be issued as required by contracts containing any of the contract clauses described in 6-603.3. Consistent with 6-602, duty-free entry certificates may be issued in connection with any other contract for an "emergency purchase of war material" that falls within one of the following categories:

(i) Direct purchases abroad regardless of whether title passes at point of origin or at destination in the United States, Providing, the contract states that the final price is exclusive of duty;

(ii) Purchases abroad by a Government prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in (iii) below should be followed; and

(iii) Purchases abroad by a fixed-price contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes, provided (A) the fixed- price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (B) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that the duty will be paid if such supplies or any portion

thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (C) such acquisition abroad is authorized by the terms of the prime contract, the applicable subcontract, or by the contracting officer. In any such case, the procedures required by the clauses in 6-603.3 and by 6-603.4 shall be followed to the extent practicable.

6-603.3 Contract Clauses.

(a) Duty-Free Entry for Specified Items. Within the limits of 6-603.2(a), the clause in 7-104.31(a) and the provision in 7-2003.49 shall be used when the contracting officer knows at the time of execution of the contract that foreign supplies (other than those for which duty-free entry is to be accorded pursuant to (c) below) on which the estimated aggregate duty exceeds $1,000, are to be imported into the United States, its possessions, or Puerto Rico, in connection with performance of the contract.

(b) Duty-Free Entry for Items Not Identified in the Contract. Within the limits of 6-603.2(a), the clause in 7-104.31(b) shall be used unless the contracting officer anticipates that, in connection with the performance of the contract, neither the prime contractor nor any first-tier subcontractor will make any purchase of foreign supplies in excess of $10,000 that would not be covered by the clauses in (a) or (c) of this paragraph.

(c) Duty-Free Entry - Qualifying Country End Products and Components. The clause in 7-104.32 shall be inserted in all contracts for supplies and in all contracts for services involving the furnishing of supplies, except that it need not be inserted in the case of simplified small purchase procedures and in contracts for supplies exclusively for use outside the United States. (See 6-104.5.)

6-603.4 Customs, Entries and Duty-Free Certificates.

(a) When a prime contract involving foreign supplies contains the clause in 7-104.31(a) or (b) and the prime contractor sends a notification of a purchase of foreign supplies under the contract to the Contract Administration Office (CAO) designated in the contract, the CAO will verify that the prime contract includes the Duty-Free Entry for Certain Specified Items clause for the items identified or the Notice of Imports--Possible Duty-Free Entry clause; and in the latter case, that the contracting officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for a reduction in contract price in the amount of duty which would be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause. The CAO will then forward the notification to Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, New York 10013. The notification will be forwarded as an enclosure to the information provided in the format shown below.

To: Commander
DCASMA, New York
Attn: Transportation Officer
Contract.....issued to.....(Contractor).

Enclosed is a contractor notification of the purchase of foreign supplies. Verification has been made that:

(...) The prime contract includes DAR Clause 7-104.31(a) Duty-Free Entry for Certain Specified Items for the items identified on the enclosed notification.

(...) The prime contract includes DAR Clause 7-104.31(b) Notice of Imports--Possible Duty-Free Entry and the Contracting Officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for an appropriate reduction in contract price.

The contract is expected to be completed by.....
Signature.....
Title.....

(b) When the Government agrees to execute duty-free entry certificates for supplies, in accordance with the clauses in 7-104.31, the contractor shall be notified that the foreign supplier is to include on the bill of lading (or other shipping document) the information required to be inserted on such documents as provided in the clause. Failure to include such information on the bill of lading (or other shipping document) will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(c) Upon receipt of a request for duty-free entry, the designated Government representative shall promptly prepare the required Customs Forms and execute the duty-free entry certificate in accordance with (d) below and forward two copies of Customs Form 7501 and one copy of Customs Form 7501A to the District Director of Customs submitting the request.

(d) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto in the following form:

(date).....

I certify that the acquisition of this material constituted an emergency purchase of war material abroad by the (indicate Department) and it is accordingly requested that such material be admitted free of duty pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(Name).....
(Title).....
(Title of Government representative who has been designated to execute free entry certificates for the above-named Department.
(Organization).....

6-603.5 Immediate Release Permits. Immediate release permits, executed on Customs Form 3461 (Application for Special Permit for Delivery

of Perishable and Other Articles, Immediate Delivery of Which Is Necessary), entitle all shipments qualifying as "emergency purchases" of war material abroad to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Form 7501 and 7501A and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Form 7501 and 7501A and appropriate duty-free entry certificates. Each Department shall designate the individuals responsible for issuance of Immediate Release Permits.

6-604 Supplies for Vessels or Aircraft Operated by the United States.

(a) Subject to the considerations set forth in 6-602, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this paragraph, the term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment". The procedures to be followed in the issuance of such certificates shall be prescribed by the respective Departments.

(b) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and shall be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

(date).....

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name).....
(Title).....
(Organization).....

6-605 Reserved.

Part 7--Military Assistance Program Acquisitions

6-700 Scope of Part. This part implements the Military Assistance Program portion of the Foreign Assistance Act of 1961 (Section 604, 22 U.S.C. 2354) and the policies set forth in the President's Determination under Section 604(a) of the said Act (Memorandum of October 18, 1961) and in Executive Order 10973 dated 3 November 1961.

6-701 Reserved.

6-702 Statutory Requirements.

(a) Section 604(a) of the Foreign Assistance Act of 1961 as implemented provides that funds made available under the Act shall not be used for acquisition outside the United States except:

(i) to acquire items required for military assistance which are not produced in the United States;
(ii) to make local purchases for administrative purposes;
(iii) to use local currency available for military assistance purposes; or
(iv) where the Assistant Secretary of Defense (ISA) certifies that exclusion of acquisition outside the United States would seriously impede attainment of Military Assistance Program objectives.

(b) Where a MAP order involves acquisition covered by a certification issued in accordance with (a)(iv) above, the Director of Military Assistance, Office of the Assistant Secretary of Defense (International Security Affairs), will specify in the order that the Military Department is authorized to contract offshore.

6-703 Procedures.

6-703.1 Applicability. The following procedures apply to all contracts for the Military Assistance Program (other than those excepted pursuant to 6-702) citing funds authorized by the Foreign Assistance Act of 1961, or citing funds made available under Department of Defense Appropriation Acts when it is known at the time of acquisition that the items being acquired are to fill existing Military Assistance Program orders and that DoD appropriations are to be reimbursed from Foreign Assistance Act funds. The requirements of this paragraph do not apply to issues from DoD inventories or to replenishment of such inventories.

6-703.2 Method of Purchase. Acquisition for the Military Assistance Program shall be restricted to domestic concerns and to U.S. end products as defined in 7-2003.51. Except for this restriction on solicitation, acquisition shall be made by formal advertising, wherever practicable, in accordance with the policy of 2-102.1. Subject to the limitations prescribed in Part 1 of Section III and pursuant to the authority of 10 U.S.C. 2304(a), acquisition may be effected by negotiation under any appropriate exception of 10 U.S.C. 2304(a) (see Section III, Part 2). The Foreign Assistance Act of 1961 shall not be used as authority to negotiate under 10 U.S.C. 2304(a)(17).

6-703.3 Certificate. When the acquisition is solely to fill existing Military Assistance Program orders, the solicitation shall so state. When the acquisition consists of both Military Assistance Program items and non-Military Assistance Program items, the solicitation

shall clearly designate the Military Assistance Program items. In either instance, the solicitation shall require that each offer for end products include the certificate in 7-2003.50.

6-703.4 Contract Clause. The clause in 7-2003.51 shall be inserted in all acquisitions of end products for the Military Assistance Program.

6-704 Exemption from Examination of Records Requirement.

6-704.1 General. Military Assistance Program purchases authorized to be made outside the United States under the Foreign Military Sales Act of 1968, as amended, and the Arms Export Control Act of 1976, as amended, are exempt (Executive Order No. 11223, dated 12 May 1965) from the requirement for examination of records by the Comptroller General (10 U.S.C. 2313(b) and Section 3(b), Public Law 85-804) in the following circumstances:

(i) contracts with foreign contractors (including foreign governments) to be performed outside the United States; and

(ii) contracts, and amendments and modifications thereof, entered into pursuant to Public Law 85-804 (see 17-501), Provided, That the Department concerned shall make a determination that it is impracticable to include the Examination of Records clause or to obtain compliance therewith; such determinations may be made by any officer or official authorized to approve contracts, and amendments and modifications thereof, pursuant to 17-201.

Notwithstanding the exemptions permitted above, the contracting officer, where practicable, shall include the Examination of Records clause in contracts covered in (i) above.

6-704.2 Department of Defense Audit and Records. Contracts exempted under 6-704.1(i) from the requirement for examination of records by the Comptroller General shall nevertheless include the Audit by Department of Defense clause set forth in 7-104.41 in accordance with the requirements of that paragraph. When the clause in 7-104.41(a) is used, the second sentence of paragraph (c) shall be deleted.

Part 8--Balance of Payments Program

6-800 Scope of Part.

(a) This Part implements the Department of Defense Balance of Payments Program with respect to all acquisitions of (i) services which require the furnishing of end items (e.g., leasing of equipment) and supplies required for use outside the United States, except Petroleum and Military Assistance Program acquisitions (see Section VI, Part 7), and Foreign Military Sales (see Section VI, Part 13) and (ii) scientific and technical knowledge, resulting in dollar expenditures outside the United States and Canada. However, the exception regarding Military Assistance Program and FMS acquisitions does not apply to 6-804. Defense requirements as to the use of U.S. Flag vessels, which affect the Balance of Payments Program, are set forth in Section I, Part 14.

(b) The Balance of Payments Program is an interim measure imposed by the Department of Defense to alleviate the impact of DoD expenditures on the nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the former applies to acquisitions required for use outside the United States, and the latter applies only to acquisitions required for use in the United States. Nevertheless, it is the policy of the Department of Defense to implement the Balance of Payments Program using evaluation procedures similar to those which implement the Buy American Act (see 6-104 and 6-105).

6-801 Prohibition Against Fragmenting Acquisitions. As to those provisions of this Part which state dollar limitations below which exceptions permitting the purchase of foreign items may be made if certain conditions are satisfied, requirements aggregating more than any such limitations shall not be broken into separate purchases which are less than such limitations merely for the purpose of allowing such exceptions.

6-802 Real Property Construction, Repair and Maintenance. All projects for construction, repair, and maintenance of real property outside the United States must be approved in accordance with DoD Directive 7060.4(AR-37-43; AFR 85-6/AFM 86-1; NAVFACINST 7020.6). Contracts for such projects will require that specified U.S. materials will be used or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including transportation and handling costs) does not exceed the cost of foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in the project approval.

6-803 Supply and Applicable Service Contracts.

6-803.1 Procedure.

(a) Except as provided in 6-803.2, proposed acquisitions of supplies and applicable services for use outside the United States shall be accomplished in accordance with he evaluation procedures in (d) below.

(b) Solicitation of Offers. Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 6-803.2) is available to prospective contractors upon request. When quotations are obtained orally, vendors shall be informed that only domestic and qualified country end products shall be acceptable other than those items which have been excepted either on

a blanket or an individual basis (see 6-803.2) or the price for the nonqualifying country end item meets the evaluation criteria in (d) below. When only domestic end products are acceptable, the solicitation shall so state (e.g., see 6-104.4(d)).

(c) Reserved.

(d) Evaluation.

(1) In accordance with the Balance of Payments Program, where these procedures result in the acquisition of foreign end products, the acquisition of domestic end products is deemed unreasonable in cost or inconsistent with the public interest. Except as provided herein and in 6-104.4(d), offers shall be evaluated so as to give preference to domestic offers as follows:

a. Each nonqualifying country offer of defense equipment (but see exception in b. below) shall be adjusted for purposes of evaluation by increasing such offer by 50 percent. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In all other instances, use the tie-breaking procedures in 2-407.6.

b. In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example A below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example B below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(2) The following examples illustrate how the procedure in (1) above should be applied.

EXAMPLE A

Nonqualifying Country Offer	$6,000
Domestic Offer	8,900
Qualifying Country Offer	8,800

Award on Qualifying Country Offer. The nonqualifying country offer, adjusted by 50-percent factor is $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE B

Nonqualifying Country Offer	$6,000
Domestic Offer	9,500
Qualifying Country Offer	8,800

Award on Nonqualifying Country Offer. Nonqualifying country offer, adjusted by 50-percent factor is $9,000. It is still lower than the

domestic offer. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offer had never been submitted and the award is made on the nonqualifying country offer.

EXAMPLE C

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis and the award is made on the nonqualifying country offer.

(e) Clauses. Except for simplified small purchase procedures, and as provided in 6-803.2(a) insert the clauses at 7-103.10, 7-104.3, 7-104.106, and 7-2003.47 in accordance with the instructions for their use. If requested, the contracting officer should advise the offeror of the effect of the required clauses.

6-803.2 Exceptions.

(a) Acquisitions of end products (including construction materials) and applicable services for use outside the United States should be made in the following cases without regard to the origin of the end products. In these cases, the clauses in 7-104.3, 7-104.106 and 7-2003.47 shall not be used.

(i) Treaty or Executive Agreement--acquisitions required to be made from indigenous sources pursuant to a treaty or executive agreement between governments.

(ii) Small Purchases--acquisitions by contracting officers located outside the United States, which are estimated not to exceed $10,000 in foreign cost.

(iii) Perishable Subsistence--acquisitions of perishable subsistence items when it is determined that delivery from the United States would destroy or significantly impair their quality at the point of consumption. The determination shall be made prior to acquisition by the individuals designated in (b)(1) below or their immediate deputies, except that this authority may be redelegated for acquisitions estimated not to exceed $500,000 in foreign cost. A determination is not required for the acquisition of perishable subsistence items for commissary resale.

(iv) Panamanian Products used in Panama--acquisitions of articles, materials or supplies that are mined, produced, or manufactured in Panama when acquired by, and for use of, U.S. Forces in Panama.

(v) Services. Services which do not primarily involve the acquisition of equipment or supplies.

(vi) Certain Food Items--acquisition of bananas, tea, coffee, spices, herbs, sugar, cocoa, cream of tartar, tapioca, and coconut.

(vii) Miscellaneous--acquisition of the requirements listed below, Provided, they do not duplicate or replace an existing organic service capability:

(A) all items on the list at 6-105;

(B) utilities, including gas, water, electricity, steam, sewage, refuse collection and disposal;

(C) maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery and system; Provided, in the case of parts, That this exception applies only if the acquisition must be restricted to the original manufacturer or his supplier in accordance with 1-313;

(D) industrial gases;

(E) brand drugs specified by the Defense Medical Materiel Board;

(F) the following bulk construction materials: sand, gravel and other soil materials, stone, concrete masonry units; and fired brick;

(G) overhaul and repair of vessels, aircraft, and vehicles which are home-ported/stationed/deployed overseas and which, because of their operating commitments, cannot return to the United States or to U.S.-operated repair facilities;

(H) ice (wet or dry);

(I) books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which there are no substitutes of U.S. origin which are intended for use in the Department of Defense Overseas Dependents' Schools; and

(J) ready-mixed asphalt and portland cement concrete Provided, That foreign cost is estimated not to exceed $10,000.

(viii) Excess and Near-Excess Foreign Currencies--acquisitions made with excess or near-excess foreign currencies when acquisition costs are in accordance with 6-1106.

(ix) Commissary Resale--purchases of subsistence items of foreign origin which are intended for resale in overseas commissary stores.

(x) Nonavailability in the United States--acquisitions as to which it is determined in advance by the individuals designated in (b) below that (A) the requirements can only be filled by foreign end products because U.S. end products are not available per se, or are not available within the time required to meet urgent military requirements directly related to maintaining combat capability, the health and safety of DoD personnel, or to protect property, and (B) that it is not feasible to forego filling the requirements or to provide a U.S. substitute for it. This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of

items available in the United States but not available within the time required (for coordinated acquisition specifying a foreign end product, see 5-1106.3(b)).

(xi) Unreasonable Cost--acquisitions, other than those covered in (i) through (x) above where United States end products or services are available and the difference between the domestic cost and the foreign cost exceeds 50 percent of the foreign cost, if so determined in advance by the individuals designated in (b) below.

(b) The individuals listed below, and the immediate deputies of those listed in (1) below, are designated to make the determinations required by (a)(iii) and (xi) above.

(1) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to other individuals specifically designated for this purpose for acquisitions estimated not to exceed $500,000:

Department of the Army--
- Director for Requirements and Acquisition, U.S. Army Materiel Development and Readiness Command;
- Commander in Chief, U.S. Army, Europe; and DCSLOG, U.S. Army, Europe;
- Commander, Eighth U.S. Army; Chief of Staff, Eighth U.S. Army;
- Chief, U.S. Army Security Agency;
- Commander, Corps of Engineers Command;
- Commander, U.S. Army, Japan;

Department of the Navy--
- Commander-in-Chief, U.S. Naval Forces, Europe;
- Commander, U.S. Naval Forces, Japan;
- Commander, U.S. Naval Forces, Philippines;
- Chief of Naval Material;
- Commander in Chief, U.S. Atlantic Fleet;
- Commander, Naval Logistics Command, Pacific Fleet;
- Commander, Military Sealift Command (MSC);
- Commandant, U.S. Marine Corps;
- Commander, Naval Facilities Engineering Command;
- Commanding General, III Marine Amphibious Force;

Department of the Air Force--
- Commander, U.S. Air Forces in Europe;
- Commander, Pacific Air Force;
- Commander, Military Airlift Command (MAC);
- Commander, Air Force Logistics Command;
- Commander, Air Force Systems Command;
- Commander, Strategic Air Command;
- Commander, Tactical Air Command;
- Commander, Air Force Communications Service;

Defense Logistics Agency--Executive Director, Contracting;
Defense Communications Agency--Director.

(2) For acquisitions estimated to exceed $2 million in foreign cost--Secretary of the Department concerned.

(c) Acquisition of scientific and technical knowledge resulting in expenditures outside the United States and Canada shall be made only in the following cases:

(i) those set forth in (a)(i), (ii) and (viii) above;

(ii) when it is determined in advance, by the individuals designated in (d) below, that the requirement can only be filled by foreign end products or services and that it is not feasible to forego filling the requirement or to provide a U.S. substitute for it; and

(iii) acquisitions other than those covered in (i) and (ii) above when U.S. end products or services are available, and the difference between the domestic cost and the foreign cost exceeds 50 percent of the foreign cost as determined by the individuals designated in (d) below.

Whenever practicable, such acquisitions shall be made on a cost-sharing basis or other arrangement designed to limit any adverse effect on the balance of payments. Policy questions concerning such arrangements should be directed to the Under Secretary of Defense for Research and Engineering.

(d) The individuals listed below (and the immediate deputies of those listed in (1) below) are designated to make the determinations required by (c)(ii) and (c)(iii) above.

(1) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to individuals specifically designated for this purpose for acquisitions estimated not to exceed $100,000:

Department of the Army--
- Commanding General, Army Materiel Development and Readiness Command;
- Commander, Corps of Engineers Command;
- Surgeon General, Army Medical Corps;
- Chief of Research, Development and Acquisition;

Department of the Navy--
- Chief of Naval Research;
- Commander, Naval Air Systems Command;
- Commander, Naval Electronics Systems Command;
- Commander, Naval Sea Systems Command;
- Chief, Bureau of Medicine and Surgery;
- Commander, Naval Supply Systems Command;
- Chief of Naval Development;
- Oceanographer of the Navy;
- Commander, Naval Facilities Engineering Command;
- Military Sea Lift Command;
- DC/S Installations and Logistics Department, Headquarters U.S. Marine Corps

Department of the Air Force--
- Commander, Air Force Systems Command;
- Commander, Air Force Logistics Command;

Defense Agencies--
- Director, Advance Research Projects Agency;
- Director, Defense Nuclear Agency;
- Director, Defense Communications Agency;
- Director, Defense Intelligence Agency.

(2) For acquisitions estimated to exceed $2 million in foreign cost--Secretary of the Department concerned, or the Under Secretary of Defense for Research and Engineering in the case of agencies set forth in (d)(1).

(e) Complete documentation justifying acquisitions under (a) and (c) above shall be prepared except for acquisitions made pursuant to (a)(ii) and (a)(vi). Such documentation shall be prepared by requiring activities, furnished in requests for determination submitted to the individuals listed in (b) and (d) above, and included in the contract file.

6-804 Identification of Expenditures in the United States. DoD balance of payment reporting instructions require the reporting of the amount of acquisitions of U.S. end products and services accomplished under these regulations. The following provisions are designed to facilitate such reporting by cognizant accounting and disbursing officers. It is essential in implementing these provisions that there be appropriate liaison between acquisition and accounting and disbursing personnel at each contracting activity.

(a) Except as provided in (b) below, the clause 7-104.58(a) shall be included in each contract of $10,000 that--

(i) requires the contractor to furnish U.S. end products except that the clause in 7-104.58(a) is not required if the contractor is a domestic concern and the Government will take title to the supplies to be furnished within the United States; or

(ii) in the case of a contract for construction, repair, or maintenance of real property, or for services, to be performed outside the United States, either--

(A) requires the contractor to acquire specified materials, equipment, or services from U.S. sources (whether or not the contractor is a domestic concern), or

(B) is with a contractor who is a domestic concern (whether or not specified items must be acquired from U.S. sources).

(b) In lieu of the clause specified in 7-104.58(a), the statement in 7-104.58(b) may be placed prominently on the face of each contract, purchase, or delivery order involving acquisitions of U.S. end products or services where the contracting officer considers that greater accuracy will be achieved or that inclusion of the contract clause is impracticable.

(c) To provide appropriate reporting of the balance of payments consequences of Defense acquisition for contracts of less than $10,000, the statement in 7-104.58(c) will be placed prominently on the face of each contract.

FOREIGN ACQUISITIONS

Part 9--International Agreements and Coordination

6-901 Scope of Part. This Part concerns the applicability of international agreements other than those in Parts 13 through 15 and coordination with overseas commands and activities in purchasing from foreign sources.

6-902 International Agreements.

(a) Various treaties and international agreements in effect between the United States and foreign governments, especially those with governments receiving military and economic aid under the Foreign Assistance Act of 1961, affect acquisition in foreign countries. Particular attention should be given to the provisions in these agreements which pertain to purchase procedures, contract forms and clauses, taxes, patents, technical information, facilities, and other matters relating to acquisition.

(b) Copies of international agreements are filed with the United States European Command (APO 128, New York) covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East. Agreements with countries in the Pacific and Far East are filed with the United States Pacific Command (CINCPAC). Many of the agreements are compiled in the "United States Treaties and Other International Agreements" series (TIAS), which is published by the Department of State. Copies of this publication are normally available in overseas legal offices and U.S. diplomatic missions. In addition, Military Assistance Advisory Groups, Naval Missions, and Joint United States Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(c) In placing contracts with contractors outside the United States for performance outside the United States, contracting officers, including those in the United States, shall ascertain the existence and applicability of any international agreements and, subject to the provisions of 1-109.4, shall comply with such agreements.

6-903 Coordination With Overseas Commands and Activities. When it has been determined that an acquisition will be made from a foreign contractor, overseas contracting offices shall be utilized to the maximum practical extent. Contracting offices not within the command jurisdiction of a unified or specified command, anticipating placement of contracts with foreign contractors, shall maintain liaison with the appropriate component commander during preaward negotiations and postaward administration. Where an acquisition may result in a requirement for logistical support of contractor employees or additional Government employees in an overseas location, the contracting officer shall insure that the contract file includes documentation reflecting specific advance approval for such commitment from the appropriate component commander.

FOREIGN ACQUISITIONS

Part 10--Exclusion of Examination of Records Clause

6-1000 Scope of Part. This Part sets forth policies and procedures for exempting the requirement for the Examination of Records by Comptroller General clause in contracts with foreign contractors and foreign subcontractors.

6-1001 Statutory Requirements.

(a) In accordance with 10 U.S.C. 2313(c), the Examination of Records by Comptroller General clause may be excluded from negotiated contracts and subcontracts with foreign contractors and foreign subcontractors where:

(i) the Secretary determines, with the concurrence of the Comptroller General or his designee, that inclusion of the clause would not be in the public interest; or

(ii) when

(A) the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and

(B) the Secretary determines, after taking into account the price and availability of the property or services from U.S. sources, that the public interest would be best served by exclusion of the clause.

(b) A determination of the Secretary under (ii) above does not require the concurrence of the Comptroller General or his designee. However, where a determination of the Secretary under (ii)(B) is the basis for exclusion of the Examination of Records by Comptroller General clause, the statute requires that a written report be furnished to the Congress. This report, which shall explain the reasons for the determination, shall be submitted in triplicate by the Department concerned, to the Office of the Assistant Secretary of Defense (Comptroller), Attention: Director for Information Operations.

6-1002 Policy. The Examination of Records by Comptroller General clause shall be included wherever possible. Exclusion of the clause should be allowed only after the contracting officer has made all reasonable efforts to include the clause and has considered such factors as alternate sources of supply, additional cost, and time of delivery. "Foreign contractor" for purposes of this Part 10 is defined as "one that is organized or existing under the laws of a country other than the United States, its territories or possessions."

6-1003 Requests for Determinations and Findings. Request for determinations and findings for exclusion ordinarily will be initiated by the contracting officer. The report shall consist of a letter submitted through normal acquisition channels, addressed to the Secretary setting forth all the facts necessary to arrive at an appropriate determination and findings.

6-1004 Determination and Findings. The determination and findings made by the Secretary to authorize exclusion of the Examination of Records by Comptroller General clause from a contract with a foreign contractor or foreign subcontractor under 10 U.S.C. 2313(c) shall:

(i) identify the contract and its purpose, and state that it is a contract or subcontract with a foreign contractor or foreign subcontractor, or that the contractor or subcontractor is a foreign government or agency thereof;
(ii) describe the efforts that have been made to include the clause in the contract or subcontract;
(iii) state the reasons for the contractor's or subcontractor's refusal to include the clause;
(iv) describe the price and availability of the property or services from United States and other sources; and
(v) determine that it is in the public interest to exclude the clause pursuant to the provisions of 10 U.S.C. 2313(c).

Part 11--Use of U.S.-Owned Foreign Currency for Payments

6-1101 Scope of Part. This Part implements the Government's policy that U.S.-owned foreign currency be used when feasible in payment of purchases in foreign countries.

6-1102 Applicability.

(a) This Part applies to acquisitions of supplies, services, or construction for use outside the United States.

(b) This Part does not apply to acquisitions (i) funded from Special Foreign Currency Program Appropriations or (ii) made under Section VI, Part 1.

6-1103 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) U.S.-owned foreign currency means currency of a foreign country which currency is:

(i) owned by the United States;
(ii) determined excess or near-excess by the United States Department of the Treasury;
(iii) available in the country of issuance to pay obligations of the United States within that country; and
(iv) disbursed by the United States Treasury Disbursing Officer in the country concerned, either directly to the contractor or to the military disbursing officer, as appropriate.

(b) Excess foreign currency means currency that has been determined by the Department of the Treasury to be in excess of foreseeable requirements of the U.S. Government. Countries in which the United States owns excess foreign currency are listed in 6-1109(a).

(c) Near-excess foreign currency means currency that has been determined by the Department of the Treasury to be above the immediate requirements of the U.S. Government. Countries in which the United States owns near-excess foreign currency are listed in 6-1109(b).

(d) U.S. dollar content means the U.S. dollar cost to an offeror for domestic source end products or services (including costs of transportation furnished by U.S.-flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

6-1104 Solicitation Procedure.

(a) Except as provided in (c) below, when supplies, services, or construction for use outside the United States are to be purchased, the solicitation shall contain the provision in 7-2003.62 when it can reasonably be expected that (i) contracts will be performed in whole or in part in a country in which there is U.S.-owned foreign currency, or (ii) a contractor (domestic or foreign) may be willing to accept U.S.-owned foreign currency in payment in whole or in part.

(b) Failure to state a price in U.S.-owned foreign currency, either in whole or in part, shall not in itself cause an offer to be considered nonresponsive to a solicitation.

(c) Requests for quotations for purchases described in Section III, Part 6, for delivery within a country in which there is U.S.-owned foreign currency shall be limited to be the local trade area of that

country; and, to the extent feasible within the criteria in 6-1108, shall require quotations to be stated only in the U.S.-owned foreign currency of that country.

6-1105 Evaluation of Offers.

6-1105.1 Conversion for Evaluation Purposes. For purposes of evaluation, offers expressed in whole or in part in U.S.-owned foreign currency shall be converted to show their equivalency in U.S. dollars at the rate of exchange used by U.S. disbursing officers for such currency on the date set for receipt of offers.

6-1105.2 Excess Foreign Currency Offers. Subject to 6-1105.4 and to the award limitations in 6-1106, preference for acceptance of offers in excess foreign currency or in combinations of excess foreign currency and U.S. dollars shall be in the following order, even though the offer preferred may not be the lowest in price:

(i) the lowest responsive offer in whole in an excess foreign currency. If equal low offers are received and one or more contain a U.S. dollar content which is not required to be paid in U.S. dollars, that offer which contains the greatest U.S. dollar content shall be preferred.

(ii) When the only responsive offers in excess foreign currency also contain a U.S. dollar content for which payment in U.S. dollars is required and is limited to that content, that offer which results in the lowest expenditure of U.S. dollars.

(iii) When the only responsive offers in excess foreign currency also require payment in part in U.S. dollars which are not limited to the U.S. dollar content, that offer which results in the lowest expenditure of U.S. dollars. If equal low offers are received and one or more contain a U.S. dollar content and others contain no U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(iv) When responsive offers in combinations described in (ii) and (iii) above are received, the lowest offer evaluated under (ii) above.

(v) When responsive offers are received in U.S. dollars only, the lowest such offer. If equal low offers are received and one or more contain a U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

6-1105.3 Near-Excess Foreign Currency Offers. The lowest responsive offer in whole or in part in a near-excess foreign currency which does not exceed the lowest responsive offer in U.S. dollars shall be preferred over the U.S. dollar offer. Offers in excess foreign currency shall always be preferred over offers in near-excess foreign currency.

6-1105.4 Consideration of Combination Offers. When responsive offers received include some which are priced only in U.S. dollars and others in combinations of U.S. dollars and excess or near-excess foreign currency, a combination offer shall not be considered for award if the U.S. dollar amount of that offer exceeds the dollar amount of the lowest responsive offer in U.S. dollars only.

6-1105.5 Evaluation Table. The following table illustrates the evaluation of offers received in whole in excess foreign currency, in combinations of excess foreign currency and U.S. dollars, and in U.S. dollars only.

EVALUATION TABLE

Offers received are priced in U.S. dollars and "X" Country's rupees. Applicable exchange rate assumed for this table is 3 rupees equal 1 dollar.

Offers	In excess currency only	In combination excess currency—U.S. $	In U.S. dollars only	In U.S. dollars as converted (See 6-1105.1)	U.S. dollars content	Preference For award	Preference See footnote
1	360R			$120	0	1	3
2		60R + $80		($20 + $80) $100	0	6	4
3		18R + $95		($ 6 + $95) $101	0	None	4
4		60R + $90		($20 + $90) $110	0	7	4
5			$94	$ 94	0	9	5
6	450R			$150	$50	2	3
7		60R + $90		($20 + $90) $110	$90	4	4
8			$94	$ 94	$50	8	5
9	450R			$150	0	3	3
10		60R + $80		($20 + $80) $100	$50	5	4

NOTES TO EVALUATION TABLE

1. All offers are assumed to be responsive.

2. The lowest offer in U.S. dollars only is $94. Therefore, $141 ($94.00 plus $47) is the maximum amount for which the contracting officer has authority to award without referral under 6-1106.2.

3. Offers 1, 6, and 9 are entirely in excess foreign currency and are given first consideration. Offer 1, being the lowest, is preferred for award. In the absence of Offer 1, Offer 6 would be preferred because it contains a U.S. dollar content of $50. In the absence of Offers 1 and 6, Offer 9 would be preferred. In accepting Offer 1, 6, or 9, the DoD Appropriation would be charged $94 (see 6-1106.1). Before Offer 6 or 9 could be accepted, they would require referral under 6-1106.2.

4. Offers 2, 3, 4, 7, and 10 are combination offers and would be given consideration in the absence of Offers 1, 6, and 9 or in the absence of Offer 1 and in case Offers 6 and 9 were not approved by higher authority

after referral under 6-1106.2. Offer 7 would be preferred over Offers 2, 3, 4, and 10 because it contains a U.S. dollar content and the part to be paid in U.S. dollars is limited to that content. In the absence of Offer 7, Offer 10 would be preferred over Offers 2, 3, and 4 because it contains a U.S. dollar content of $50, and, although the part to be paid in U.S. dollars is more than that content, it would result in the least expenditure of U.S. dollars. In the absence of Offers 7 and 10, Offer 2 would be preferred over Offers 3 and 4 because it would result in the least expenditure of United States dollars. In the absence of Offers 2, 7, and 10, Offer 4 would be preferred. Offer 3 could not be considered for award because the U.S. dollar amount ($95) exceeds the lowest offer in U.S. dollars ($94)(see 6-1105.4).

5. Offers 5 and 8 are entirely in U.S. dollars and would be given consideration in the absence of all other offers or in the absence of all other offers except 6 and 9 and in case those offers were not approved by higher authority after referral under 6-1106.2. Offer 8 would be preferred to Offer 5 because it contains a U.S. dollar content of $50.

6-1106 Awards.

6-1106.1 Basis. Award shall be made in accordance with 6-1106.2 and 6-1106.3. When unreasonable overpricing in relation to the U.S. dollar cost or the normal local foreign currency cost to non-DoD users of the same or similar items exists, the proposed acquisition shall be referred to higher authority.

6-1106.2 Awards by the Contracting Officer. The contracting officer shall have authority to award contracts as follows:

(i) to the offeror submitting the lowest responsive offer in whole or in part in excess foreign currency when that offer does not exceed the lowest responsive offer in U.S. dollars by more than 50 percent and the lowest responsive offer in U.S. dollars does not exceed $50,000; (Note: The cost to the DoD appropriation shall be the lowest responsive offer in U.S. dollars. The additional cost will be assumed by the Department of the Treasury.)

(ii) to the offeror submitting the lowest responsive offer in whole or in part in near-excess foreign currency, when that offer does not exceed the lowest responsive offer in U.S. dollars;

(iii) to the offeror submitting the lowest responsive offer entirely in U.S. dollars, Provided, That payment in U.S. dollars is authorized under 6-1108. (Where a foreign purchase is contemplated under 6-805.2(a)(ix) and is not otherwise excepted, and where payment is to be made in U.S. dollars only, the acquisition shall be made in accordance with 6-806.1.)

6-1106.3 Awards Requiring Approval by Higher Authority.

(a) The contracting officer shall refer the proposed acquisition to the appropriate official listed in (c) below when:

(i) the lowest responsive offer in excess foreign currency exceeds the lowest responsive U.S. dollar offer by more than

50 percent regardless of the U.S. dollar cost of the contract;

(ii) the lowest responsive U.S. dollar offer exceeds $50,000; or

(iii) the lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

(b) The contracting officer shall refer the case expeditiously describing, as a minimum, the acquisition involved; the number of offers received in each currency category; the lowest responsive offer in U.S. dollars; the date or dates the offers will expire; and recommending the offer, if any, that should be accepted.

(c) The Secretaries of the Military Departments, the Under Secretary of Defense for Research and Engineering, the Directors of Defense Agencies, and the Assistant Secretary of Defense (Comptroller), or their designees, shall determine whether a proposed acquisition described in (a) above shall be made payable in U.S.-owned foreign currency or in U.S. dollars.

6-1107 Determinations of Nonfeasibility and Contract Certifications.

(a) At the time of award, the contracting officer shall determine whether payment in U.S.-owned foreign currency is feasible.

(b) When the contracting officer determines that it is not feasible under one of the criteria in 6-1108 to use U.S.-owned foreign currency for payment of a contract, he shall execute a Contract Certification in the following format.

CONTRACT CERTIFICATION

I hereby certify that it is not feasible to make payment under this contract in the country of _____ in the amount of $_____ from U.S.-owned foreign currency for the reason stated. (Cite the applicable criterion.)

(Signature)_____

(Typed Name and Title of Contracting Officer_____

_____ _____ _____)

(c) When U.S.-owned foreign currency and U.S. dollars are combined for payment of a contract, the dollar amount shown in the Contract Certification shall be that amount which is to be paid in U.S. dollars.

(d) The original and one copy of each Contract Certification shall be furnished to the disbursing officer designated to make payments under the contract; and one signed copy shall be filed with the contract. Other distribution may be made in accordance with departmental instructions.

6-1108 Criteria for Nonfeasibility Determinations. The following criteria shall be used in determining that payment of contracts in whole or in part in U.S.-owned foreign currency is not feasible:

(i) The Department of the Treasury is not holding excess or near-excess foreign currency in the country concerned.

(ii) The contract is to be awarded in a foreign country where there is U.S.-owned foreign currency but where a treaty,

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36387

executive agreement, or law of the country concerned requires payments to be made in U.S. dollars.

(iii) Responsive offers require payment in U.S. dollars in whole or in part.

(iv) The only responsive offers received require payment entirely in U.S. dollars.

(v) The acquisition is for a compelling need and of such urgency that serious injury to the U.S. Government would likely be incurred if payment in excess or near-excess foreign currency were to be insisted upon.

(vi) Offers in excess or near-excess foreign currency were unreasonably overpriced in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar items or services and payment in United States dollars has been authorized by the proper authority under 6-1106.3(c).

6-1109 Excess and Near-Excess Currency Countries.

(a) The Department of the Treasury holds excess foreign currency in the following countries.

Country	Currency
Burma	Kyat
Egypt	Pound
Guinea	Franc
India	Rupee
Pakistan	Rupee

(b) The Department of the Treasury holds near-excess foreign currency in the following countries.

Country	Currency
Morocco	Dirham
Poland	Zloty
Taiwan	Taiwan Dollar
Tunisia	Dinar
Yugoslavia	Dinar

(c) Changes in the currency position of the countries in which excess and near-excess foreign currency is held are disseminated periodically by the Departments to their disbursing officers.

6-1110 Contracts With Domestic Concerns. The clause in 7-104.66 shall be included in any contract with a domestic concern (see 6-001.7(a)) when the contracting officer anticipates the contract will be performed in any U.S.-owned foreign currency country.

Part 12--Use of Local Currency in Payment of Foreign Contracts

6-1200 Policy. Consistent with 6-1101, it is the policy of the Department of Defense to price and pay contracts with foreign contractors in a manner that is fair to both parties and will not provide a windfall to either party. Generally, this means that offshore contracts with local firms will be priced and paid in local currency unless (i) there exists a Status of Forces Agreement providing for payment in U.S. currency or (ii) the use of local currency is determined to be inequitable, and the use of U.S. currency is authorized at a level above the contracting officer. An example of a situation where pricing and paying in dollars may be appropriate or necessary would be a contract requiring significant purchases in the United States. Exchange rate fluctuations in favor of the local currency, i.e., where the local currency appreciates in value in relation to the dollar, may result in violation of the Anti-Deficiency Act. To avoid this possibility, contracting officers should comply with established Departmental procedures to insure the availability of adequate dollar appropriations to cover any purchases of currency needed from time to time to make payments against the contract price even though the value of the currency should appreciate vis-a-vis the dollar.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

Part 13--Acquisitions For Foreign Military Sales

6-1300 Scope of Part. This Part sets forth policies and procedures applicable to acquisitions made for the purpose of Foreign Military Sales (FMS) pursuant to the Arms Export Control Act. It does not apply to Foreign Military Sales made from inventories or stocks, to acquisitions for replenishment of inventories or stocks, or acquisitions made under DoD Cooperative Logistic Supply Support Arrangements. An FMS Agreement is an accepted Letter of Offer and Acceptance which is the document by which the U.S. Government agrees to sell defense articles and services to a foreign government or international organization.

6-1301 Applicable Statutory Provisions.

6-1301.1 Contract Authorization.

(a) Pursuant to Section 22 of the Arms Export Control Act (Public Law 90-629, as amended) the Department of Defense is authorized to enter into contracts for purposes of resale to foreign countries or international organizations.

(b) The Act provides in part that:

(1) The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the acquisition of defense articles or defense services for sale for U.S. dollars to any foreign country or international organization if such country or international organization provides the U.S. Government with a dependable undertaking (i) to pay the full amount of such contract which will assure the U.S. Government against any loss on the contract, and (ii) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(2) The President may, if he determines it to be in the national interest, issue letters of offer under Section 22 of the Arms Export Control Act, as amended, which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within 120 days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act.

6-1301.2 Commercial Availability. Section 38(b)(3) of the Arms Export Control Act (22 USC 2778(b)(3)) prescribes that: "No license may

be issued under this Act for the export of any major defense equipment sold under a contract in the amount of $35,000,000 or more to any foreign country which is not a member of the North Atlantic Treaty Organization, Australia, Japan or New Zealand unless such major defense equipment was sold under this Act." DoD policies and procedures with respect to commercial availability are contained in the Military Assistance and Sales Manual (DoD Manual 5105.38-M), Part III, Chapter H, entitled Commercial Availability, published by the Defense Security Assistance Agency. (See DoD Manual 5105.38-M.)

6-1302 Applicability. The Defense Acquisition Regulation shall apply to all purchases and contracts made by the Department of Defense in support of Foreign Military Sales (see 1-102).

6-1303 Preparation of DoD Offer and Acceptance, DD Form 1513.

6-1303.1 DD Form 1513 lists the items and/or services, estimated costs, the terms and conditions of sale, and provides for the foreign government's signature to indicate acceptance. (See Appendix F-200.1513.)

6-1303.2 Procedures.

(a) In connection with each Foreign Military Sale expected to involve a contract in excess of $10,000 which cannot be placed on the basis of price competition (as, for example, when the foreign customer has designated only one source as acceptable), before the Department of Defense furnishes prices for information purposes to potential foreign customers, prices, delivery and other relevant information shall be requested from the prospective source and such request shall state that it is for information for the purpose of a potential Foreign Military Sale and shall identify the customer.

(b) As a general rule on FMS programs requiring new acquisitions, the Contracting Officer should participate in the preparation of Price and Availability Data to support the tendering of the DoD Offer and Acceptance (DD Form 1513) by the U.S. Government to foreign countries and international organizations. In addition to the identification and review of sales commissions and fees (see 6-1305), the contracting officer shall request contractors to identify in advance of the DoD Offer and Acceptance any unusual provisions or deviations, particularly those proposed for the contract which could affect the prices quoted. Such unusual contractual requirements shall also be identified in the submittal of the price and availability data to the Departmental activity responsible for providing the DoD Offer and Acceptance to the foreign country. If the Departmental activity expands, modifies or does not accept such requirements, the contractor shall be advised prior to the submission of the offer to the foreign country.

6-1304 Pricing Acquisitions for Foreign Military Sales.

6-1304.1 General. When the Department of Defense undertakes purchasing for sale to a foreign country which has committed itself to bear the cost of the acquisition, the Department of Defense assumes responsibility to see to it that no more than a fair price is paid for the acquisition. Accordingly, FMS contracts shall be priced on the same principles and with the same care as are used in pricing normal defense contracts. This does not mean that prices of normal defense contracts for an item are automatically applicable to FMS contracts for the same

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

item. On the contrary, application to FMS contracts of the pricing principles established by Section III, Part 8, and Section XV may require pricing results that differ from normal defense contract prices for the same item because certain kinds of costs may reasonably and allocably arise in different amounts for the former than for the latter. In this regard, known FMS requirements shall be separately identified in solicitations. (See 2-201(a) Section L, and 3-501(b) Section L).

6-1304.2 Commercial Sales to Foreign Customers. If the contractor has made sales of an item to foreign customers under comparable conditions including quantity and delivery, the pricing of FMS contracts shall be in accordance with 3-800.

6-1304.3 Cost of Doing Business With a Foreign Covernment or an International Organization.

(a) In pricing FMS contracts, where non-U.S. Government prices as described in 6-1304.2 do not exist, recognition should be given to costs of doing business with a foreign government or international organization (even though the form of the transaction is a defense purchase for the purpose of FMS) whenever comparable costs of doing business with the United States would be recognized in pricing normal defense contracts. Thus, recognition should be given to reasonable and allocable costs even though such costs might not be recognized in the same amounts in pricing normal defense contracts. Examples of such costs include, but are not limited to, the following:

(i) Selling Expenses (not otherwise limited by 15-205.37(c)); e.g.:

(A) maintaining international sales and service organizations;

(B) sales commissions and fees in accordance with 1-505.4 and 6-1305;

(C) sales promotions, demonstrations, and related travel for the purposes of sales to foreign governments; however, such costs shall not be recovered against U.S. Government contracts for U.S. Government requirements. These expenses may be recovered provided that when required by paragraph 123.16 of the International Traffic in Arms Regulations (ITAR)(22 CFR Part 121), such promotion or demonstration has received U.S. Government approval.

(D) configuration studies and related technical services undertaken as a direct selling effort to a foreign country.

(ii) Product Support and Postdelivery Service Expenses; e.g.:

(A) operations or maintenance training, training or tactics films, manuals, or other related data;

(B) technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.

(iii) Costs associated with the implementation of DoD offset arrangements.

(iv) Costs that are the subject of advance understanding, in accordance with the provisions of 15-107, 15-205.3 or 15-205.35, where the advance understanding places a limit on the amounts of cost that will be recognized allowable in defense contract pricing and the understanding contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

(b) Costs that are not allowable under Section XV (e.g., entertainment costs) are not allowable in pricing FMS contracts. (See also 15-205.37.)

(c) The provisions of Section 203, Public Law 91-441, do not apply to contracts for Foreign Military Sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs incorporated in 15-205.3(d)(2)(A) and (B), and on Independent Research and Development (IR&D) costs incorporated in 15-205.35(d)(1) and (2) shall not be applicable to contracts for Foreign Military Sales. IR&D and B&P costs allowed on contracts for Foreign Military Sales shall be limited to their allocable share of the total expenditures. In pricing contracts for Foreign Military Sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

(d) Pursuant to Section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States shall make appropriate charges for administrative services in order to recover the estimated cost of administration of sales made under the Arms Export Control Act.

6-1304.4 Government-to-Government Agreements. In the event a government-to-government agreement between the United States and a foreign government, for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item or support item, contains language in conflict with the provisions of 6-1304.1 through 6-1304.3 above, the language of the government-to-government agreement shall prevail.

6-1305 Sales Commissions and Contingent Fees on Foreign Military Sales.

6-1305.1 Scope of This Paragraph. This paragraph 6-1305 provides policies and procedures for determining the applicability and allowability of sales commissions and contingent fees on FMS purchases. It supplements the policies contained in 6-1304.3(a)(1), 15-205.37(c) and Section I, Part 5.

6-1305.2 Policy. Sales commissions and contingent fees are allowable under defense contracts provided that, in accordance with 15-205.37(c) and 1-505, the commissions or fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor (hereinafter referred to as contractor) for the purpose of securing business. For FMS, it is extremely difficult for the Department of Defense to verify the services rendered or the value of services by bona fide employees or bona fide established commercial or selling agencies. Therefore, it is the policy of the Department of Defense that the allowable cost of sales commissions and contingent fees (as defined in 1-505.1) anticipated to be included in

FMS contracts is limited to $50,000 (see 6-1305.4) and such fees or commission shall be made known to the purchasing government prior to or in conjunction with the submission of the DoD Offer and Acceptance (DD Form 1513) to that government.

6-1305.3 DoD Offer and Acceptance Procedures.

(a) In submitting an Offer and Acceptance to a foreign government which is known to contain a sales commission or fee, the Department of Defense will include:

(i) the name and address of the sales representative;

(ii) the estimate of the proposed fee, along with a statement as to the percentage of sale involved if such fee is based on a percentage of the sale price; and

(iii) a statement indicating one of the following, whichever is applicable:

(A) appropriate officials within the U.S. Department of Defense consider the fee to be fair and reasonable;

(B) in the event only a portion of the proposed fee is considered fair and reasonable, a statement to this effect together with the rationale therefor; or

(C) the U.S. Department of Defense cannot determine reasonableness of the proposed fee.

The notification in the Offer and Acceptance may also include the contractor's explanation of or justification for the proposed charge, together with any other data which may be requested by the purchasing government.

(b) The Offer and Acceptance also will include a statement to the effect that acceptance of the offer by the purchasing government, after receipt of the appropriate notification outlined above, will constitute that government's approval of the sales commission or fee involved. No fee shall be accepted by the Department of Defense if disapproved by the purchasing government.

(c) There may be occasions, as when FMS requirements are to be fulfilled by competitive acquisitions, when it is not possible to determine prior to presentation of the Offer and Acceptance whether or not the price to be paid for material or services will include sales commissions and fees. In such cases, the purchasing government will be notified (by DoD officials responsible for presentation of the Offer and Acceptance) as soon as possible if subsequent contract negotiations indicate that a sales representative's charges will be claimed by the contractor. This notification will include the information outlined in (a) above, along with an indication that the Department of Defense will determine whether or not to accept such costs as a valid charge to the contract unless contrary notification is received from the purchasing government within 30 days of the date of the notification.

(d) If in making the determination required by 1-505 and 6-1305.4 (c) the responsible contracting official determines that a sales representative is not bona fide for reasons other than reasonableness of fee, no Offer and Acceptance will be tendered pending withdrawal by the prospective contractor of the fee for such sales representative from his proposal.

6-1305.4 Applicability and Allowability of Sales Commissions or Fees.

(a) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported based on the criteria in 6-1305.4(b). If deviations to this policy are considered necessary, 1-109.3 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(b) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer, except with respect to those contracts excluded in 1-506.3(i) and (ii), shall:

(i) require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) determine under 1-505 whether a bona fide employee or agency relationship exists; (For the purposes of FMS, the definition in 1-504 of improper influence also extends to officials of the foreign government.)

(iii) require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of reasonableness for the purposes of making the statement required by 6-1305.3(a)(iii), is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(c) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 6-1305.3(a)(iii) fee statements), subject to the approval of the chief of the contracting office.

6-1305.5 Contracting Procedures Relating to Sales, Commissions and Fees.

If, after notification by DoD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by

6-1305.3, the foreign government disapproves the fee, or a portion of the fee, the contracting office shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

6-1305.6 Special Country Requests With Respect to Sales Commissions and Fees. Pursuant to DoD Manual 5105.38-M (Military Assistance and Sales Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordon, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, or Thailand are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall insert the clause in 7-104.107 in all solicitations and contracts for FMS awarded on behalf of these purchasers unless such payment has been approved.

6-1306 Recovery of Nonrecurring Costs.

6-1306.1 Policy. It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products, and/or a fair price for its contribution to the development of related technology, when such products are sold and when technology relating to the manufacture of the products is sold or licensed to a foreign government, international organization, foreign commericial firm, or domestic organization. Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under a foreign military sales case when subsequent customers purchase the same specialized feature.

6-1306.2 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(i) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(ii) Nonrecurring production costs.

(iii) RDT&E and nonrecurring production costs for special features under a foreign military sale, when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components which individually meet the above thresholds, recoupment will be made on a component when sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

6-1306.3 Procedures. Charges shall be computed and assessed by the DoD officials responsible for presentation of the DD Form 1513. Such charges shall not be included in the contractor's proposed price.

6-1307 Source Selection.

(a) Purchases for FMS customers shall be implemented under normal acquisition and contract management procedures set forth in DAR and other directives. However, the FMS customer may request that a defense article or defense service be obtained from a particular prime source. In such cases, 3-210.2(xviii) provides authority to negotiate on a sole source basis. The FMS customer may also request that a sole source subcontract be placed with a particular firm. The contracting officer shall honor requests for sole source prime and subcontracts from the FMS customer as specified in the Letter of Agreement or other written direction by the military sales organization.

(b) Representatives of the FMS customer shall not be permitted to direct the deletion of names of firms from bidders mailing lists or slates of proposed A/E firms. They may, however, suggest that certain firms be included. Contracting offices shall not accept directions from the FMS customer as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2. of the DD Form 1513), nor shall the FMS customer be permitted to interfere with a prime contractor's placement of his subcontracts. Requests by the FMS customer for rejection of any bid or proposal shall not be honored unless the rejection is justified on the basis of reasons which would be sufficient in the case of a purchase by the Department of Defense to meet its own needs.

6-1308 Limitation of Liability. In acquisitions for FMS, the foreign purchaser shall be advised that the appropriate Limitation of Liability clause(s) (see 1-330) is included in the FMS contract (see Condition C on the DD Form 1513). If the foreign customer does not agree to assume the risk for loss or damage as provided in the clause(s) and objects to the inclusion of such clause(s) in the Offer and Acceptance, the contractor shall be so advised. The costs of necessary insurance, if any, to be obtained by the contractor to cover such risk of loss or damage shall be considered in establishing the FMS contract price of such items.

6-1309 Exercise of Options for Foreign Military Sales. The contract shall contain appropriate notice and recognition of the Government's right to exercise the option on behalf of a foreign country (see 1-1503(e), 1-1505(c)(ii), and 7-104.27(d)).

6-1310 Implementation of Offset Arrangements Negotiated Pursuant to Foreign Military Sales Agreements.

6-1310.1 Scope of Paragraph. This paragraph 6-1310 sets forth policies and procedures concerned with the fulfillment of Department of Defense offset arrangements negotiated pursuant to an FMS agreement. An "FMS/offset arrangement" is that which is negotiated pursuant to an FMS agreement wherein the Department of Defense agrees to place, on a contractural basis and consistent with the guidance in 6-1310.2(b), a certain percentage of the FMS agreement dollar value or a stated dollar objective in that country with which the FMS agreement has been negotiated. The purpose of an FMS/offset arrangement is to fulfill

commitments negotiated pursuant to an FMS agreement. Australia, Belgium, Denmark, Netherlands, Norway, and Switzerland have FMS/offset arrangements negotiated pursuant to FMS agreements. However, Belgium, Denmark, Netherlands, and Norway are also participating NATO countries and are accorded preferences under Part 14.

6-1310.2 General.

(a) Since May 4, 1978, it has been DoD policy not to enter into government-to-government offset agreements because of the inherent difficulties in negotiating and implementing such arrangements. Exceptions to this policy must be approved by the Secretary of Defense or his Deputy and will only be made when there is no feasible alternative to ensure the successful completion of FMS transactions considered to be of significant importance to the national security interests of the United States.

(b) Where authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to identify items for which foreign sources may obtain contracts up to a specified offset level and in accordance with the terms and conditions of the particular DoD offset agreement. Normally FMS/offset arrangements should be negotiated prior to the FMS agreement Offer and Acceptance in order that the Department of Defense and its prime contractors will have an opportunity to assess in advance the DoD's or contractor's ability to fulfill the FMS/offset arrangement, and include in the offer those DoD and contractor costs associated with such arrangements.

(c) If an exception is granted pursuant to paragraph (a) above, the policy of the Department of Defense is that the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement. Only if it is determined that the FMS/offset arrangement cannot be fulfilled in this fashion will the Department of Defense seek to fulfill the offset commitments through other defense purchases. When practical, the U.S. prime contractor shall be contacted and coordination obtained prior to the Government committing the U.S. prime contractor's participation.

(d) The Defense Security Assistance Agency (DSAA) acts as the focal point within the Executive Branch for interagency coordination on offset policy in consultation with the Office of the Assistance Secretary of Defense (International Security Affairs), from which DSAA derives overall policy guidance. The Office of the Under Secretary of Defense for Research and Engineering (OUSDRE) is responsible for matters pertaining to the fulfillment of the offset portion of FMS agreements. General informaton regarding the existence of FMS/offset arrangements with particular countries or implementation of such arrangements may be obtained by submitting inquiries through the Departments to the Director for International Acquisition, OUSDRE(AP).

6-1310.3 Procedures.

(a) Whenever an FMS agreement involves a single major weapon system, the Department responsible for acquisition of the weapon system will be responsible for managing any resulting FMS/offset arrangement. If an FMS agreement involves the sale of items from two or more Departments, OUSDRE may either direct that one Department be responsible for coordinating the implementation of the FMS/offset arrangement, or apportion

responsibility for managing the offset program among two or more Departments. Such management includes (i) the development of special contractual provisions consistent with (c) below, (ii) the consideration of other DoD contract items for competition by foreign sources (to the extent other defense purchasing is involved or becomes necessary), and (iii) the obtaining of appropriate exemptions by the Secretary of the purchasing Department concerned from the Buy American Act under 6-103.3, the Balance of Payments Program, duty and other applicable acquisition restrictions on a purchase-by-purchase basis of defense equipment. (See sample Determination and Findings set forth in (b)(1) below for the exemption of the Buy American Act.) Even though a Military Department or Defense Agency is not responsible for the management of a certain FMS/offset arrangement, it will consider, for competitive acquisitions, offers of defense equipment from FMS/offset arrangement country sources.

(b) Solicitation of FMS/offset arrangement country sources shall be accomplished using procedures like those set forth in 6-1403.1(a) for participating countries. When soliciting sources outside the United States, international air mail shall be utilized where security classification permits. (See 2-202.1, 2-203.1 and 3-503.2.) For the purpose of evaluating an FMS/offset arrangement country offer, it shall be treated as if it were a participating country offer and evaluated in accordance with 6-1403.1(c). If after such evaluation, it is clear that the FMS/offset arrangement country offer is low or otherwise eligible for award, the contracting officer shall request from the Secretary of the Department concerned the appropriate exemptions for the acquisition as set forth in (b)(1) below. The list set forth at 6-1405 shall also apply to FMS/offset arrangement countries.

(1) To obtain an exemption under 6-103.3 of the Buy American Act, the contracting officer shall process a Determination and Findings for the signature of the Secretary of the Department or Agency concerned. The Determination and Findings shall be substantially as follows for end items or modified as necessary for components (see 6-001.2):

SERVICE OR AGENCY _____
EXEMPTION OF THE BUY AMERICAN ACT (41 U.S.C. 10a-d)
DETERMINATION AND FINDINGS

Upon the basis of the following findings and determinations which I hereby make in accordance with the provisions of DAR 6-103.3, acquisition of an _____ (FMS/offset arrangement country) _____ (describe item) _____ may be made as provided below.

FINDINGS

1. The _____ (Contracting Activity) _____ proposes to purchase _____, under contract number _____, mined, produced or manufactured in _____ (country of origin) _____. The total estimated cost of this acquisition is _____.

2. The United States Government (USG) and the Government of _____ have entered into an FMS/offset arrangement whereby the Government of

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36403

_____ will purchase US defense articles and services and the USG, through the Department of Defense (DoD) if necessary, will offer potential DoD requirements suitable for purchases of _____(FMS/offset arrangement country)_____ defense items.

3. The Agreement provides that competitive offers of ___(FMS/offset arrangement country)___ end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that _____(FMS/offset arrangement country)_____ items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of ___(FMS/offset arrangement country)___ items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, (7-104.3) which states that an exemption from the application of the Buy American Act may be granted by the Secretary of the Department concerned. Offers were solicited from other sources and the offer received for an _____(FMS/offset arrangement country end item)_____ is found to be acceptable.

DETERMINATION

Pursuant to the Buy American Act (41 U.S.C. 10a-d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

_____(Date)_____ _____(Secretary of Department)_____

(c) To assure that the policy of 6-602 is carried out regarding the issuance of duty-free entry certificates, the contracting officer shall include the clause in 7-104.31(a) or 7-104.31(b), as appropriate, in contracts which either contribute, or are anticipated to contribute, to the fulfillment of an FMS/offset arrangement.

(d) The clause set forth at 7-104.105 shall be used in a contract when the domestic concern involved in the Foreign Military Sale has accepted responsibility for accomplishing any portion of an FMS/offset arrangement. (Paragraph (a) of the clause should be modified as necessary to state any special terms and conditions of the FMS/offset arrangement, such as competitive prices or otherwise, period of offset accomplishment, special type or nature of offset required, and so forth).

(e) When an FMS/offset arrangement program is structured to provide offset potential on a number of DoD purchases, as opposed to only within the prime FMS contracts, DoD solicitations which contemplate proposals

of FMS/offset arrangement country end products should indicate that the price evaluation of offers will be accomplished without the application of the Buy American Act or the Balance of Payments Program differentials or duty, which would otherwise be applied to the price evaluation in accordance with other Parts of this Section VI. If on the basis of such evaluation, an offeror proposing an end product from an FMS/offset arrangement country source is low, the matter will be forwarded to the Secretary of the Department for consideration as to whether it would be in the public interest to exempt the end product from the restrictions of the Buy American Act (see 6-103.3) and the Balance of Payments Program regulations. FMS/offset arrangement country sources, in competing for DoD purchases under a DoD FMS/offset program, must be responsive to the terms and conditions of DoD solicitations unless otherwise specifically provided for in the FMS/offset arrangement with the FMS/offset arrangement country. DoD contracting activities must also comply with all other laws and regulations governing foreign purchases, such as security restrictions and disclosure of information to foreign nationals. (See 6-1403.3.)

(f) In a general FMS/offset arrangement which contemplates foreign competition with U.S. sources for defense contracts (as opposed to one structured to be accomplished within the FMS prime contracts for that sale), the preferable procedure is to require the foreign government to propose, from time to time, specific defense-related items which appear susceptible to competition by companies in that country. When such proposals are made, the foreign government will include the names and addresses of the foreign sources which that foreign government considers qualified to perform the work. However, in order to ensure fulfillment of the FMS/offset arrangement within the specified time limits, the Departments are also expected to exercise initiative in seeking out items which might be suitable for such foreign competition and in making arrangements through the foreign government, if necessary, to identify suitable sources.

6-1311 Use of Government Production and Research Property on Work for Foreign Governments or International Organizations. See 13-406.

6-1312 Exclusionary Policies and Practices of Foreign Governments. All contracts for the purchase of goods or services for Military Assistance Programs (MAP), International Military Educational Training (IMET) and Foreign Military Sales (FMS) shall include the clause in 7-104.97.

6-1313 Nonapplicability of Rates Under 49 U.S.C. Section 10721 (Formerly "Section 22 Rates"). See 19-217.1.

6-1314 Reserved.

6-1315 FMS/Offset Arrangements Negotiated Pursuant to FMS Agreements. The following agreements are provided for information purposes only.

6-1315.1 Australian Memorandum of Discussion.

MEMORANDUM OF DISCUSSIONS

Against the purchase by the Government of Australia from the United States Department of Defense of major weapons systems and items of defense equipment, the U.S. Department of Defense agrees to establish the basis of an associated offset arrangement. The offset arrangement is pursuant to the discussions held in Washington on 10 April 1973

36404 Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

between the U.S. Department of Defense and the Australian Department of Defence. In these discussions the following principles and understandings were agreed:

1. The U.S. Department of Defense will commit itself to a combined U.S. industry and DoD offset objective of no more than 25% of the value of a major Australian order.

2. The U.S. Department of Defense and the Australian Department of Defence will look to those U.S. firms benefiting substantially from an Australian order to carry the initial and primary burden of offset implementation.

3. In the event that U.S. firms and subcontractors are unable to completely fulfill their offset objectives, the U.S. DoD will first offer Government Furnished Equipment (GFE) to Australian industry as bid opportunities and, second, if GFE items turn out to be unsuitable for either partner, select other items of defense equipment and supplies which appear to be competitively obtainable from Australian sources.

4. The DoD reserves the right, unilaterally, to select appropriate procurements for offset implementation. However, to facilitate the selection of suitable items, DoD will consult with A/DoD to identify areas of Australian industrial/technological strength.

5. DoD procurement from Australian sources will normally be competitive and be subject to two basic conditions: one, that the items of procurement fully satisfy DoD requirements for performance, quality, and delivery, and two, that the items of procurement cost DoD no more than would comparable U.S. items or other foreign items eligible for award.

6. If and when special circumstances invite it, the DoD may consider alternative means of procurement involving directed procurements or negotiated procurements, including items of Research and Development, to the extent appropriate items can be selected.

7. Procurements from Australian sources made under DoD implementation of offset arrangements will be in accord with the Armed Services Procurement Regulations (ASPR). Selective waiver of the Buy American Act and the DoD "Gold Flow" rule will be made by the DoD for those procurements in which Australian sources are solicited and evaluated to be the winning bid except for application of these differentials. Thus the DoD will authorize case-by-case exceptions of these differentials in consonance with the principles and understandings of this Memorandum of Discussions.

8. As a general rule, the DoD role in this offset agreement will begin at the time of an Australian Request for Quotation (RFQ). The time-frame for placement of orders in fulfillment of the DoD share of the U.S. offset objective will be within five years of the initial date of delivery of the items purchased against which the offset objective is measured.

9. Notwithstanding the DoD's willingness to facilitate and to assist the A/DoD and Australian industry in successfully accomplishing the purposes and understandings of the offset arrangement, it remains the basic Australian responsibility to carry out those actions to bring its sales to the U.S. defense industry market and to the DoD to successful consummation.

10. It is recognized that detailed implementing procedures for the management of offsets will be needed. These procedures necessarily involve both procurement and sales activities and they will be developed in subsequent meetings as mutually agreed.

Signed, ad referendum, this 10th day of April 1973 in Washington, D.C.

SUBMITTED:	Leonard A. Alne For the U.S. Department of Defense	Roy W.C. Davies For the Australian Department of Defence
APPROVED:	W.P. Clements, Jr.	L. Barnard, M.O.D.

6-1315.2 Swiss F-5 Agreement.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE GOVERNMENT OF THE UNITED STATES CONCERNING THE F-5 PROGRAM

1. The Government of the Swiss Confederation, acting through the Federal Military Department (hereinafter called the FMD) intends to purchase a quantity of F-5E and F-5F aircraft, with associated supporting defense articles and services, from U.S. sources through the United States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The goal of the Memorandum of Understanding (MOU) is to offset to the maximum extent possible the amount to be paid by the Swiss Government for the aircraft and supporting equipment set out in paragraph 1 by placing contracts on a competitive basis with Swiss industries, but in no event will the goal be less than 30%.

3. The United States Government, acting through the DoD, and the Government of the Swiss Confederation, acting through the FMD, in seeking to attain this goal, will look to those U.S. firms benefiting substantially from the Swiss purchase to carry the primary burden of offset implementations. It will be the basic responsibility of industry in each country to identify and define their capabilities and to carry out the supporting action to facilitate the industrial participation envisioned herein. During the first two years the primary burden of offset implementation will be upon Northrop, General Electric and related contractors. However, if during that period Swiss industry offers items which can meet valid U.S. defense procurement on a competitive basis, the provisions of paragraph 5 will be applicable. After such two year period representatives of the parties hereto, with appropriate representatives from the industrial sectors, will meet to review progress hereunder. Should it be apparent that the offset objectives may not be reached before the expiration of the MOU, the DoD will augment industry efforts to reach that objective by offering to Swiss industry the opportunity to provide defense articles and services under competitive solicitation procedures and in accordance with paragraph 5.

4. (A) In order to achieve the goal the DoD, contingent on the sale of the above quantities of aircraft to the Government of the Swiss Confederation, agrees to use its best efforts to have Northrop, General Electric, and other companies associated with the F-5E and F aircraft program provide Swiss industry with the opportunity to compete, on an equal basis with U.S. industry and other sources for sub-contracts. In addition, the DoD will encourage the prime contractors (Northrop and GE) to implement their plans for expansion of Swiss products in the U.S. and third-country markets.

(B) Swiss items purchased by U.S. sources (including municipalities) and Swiss items purchased by third-country sources as a result of the efforts of Northrop, GE and other U.S. contractors associated with the F-5 program will be recognized in any computation of offset amounts. The primary test will be a mutual accord as to whether or not a given sale occurred as a result of efforts arising from this offset agreement. To facilitate these computations the DoD will look primarily to the contractor to keep records adequate for this purpose.

5. The DoD agrees that in seeking to attain this goal, it will:

(A) Provide for waiver of the cost of import duties in evaluating defense prime contracts and sub-contract solicitations from Swiss industry and for the necessary duty-free entry certificates and related documentation.

(B) Emphasize that in inviting submission of selected tenders, special consideration should be given to those items for which Swiss industry can bid on a competitive basis.

(C) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(D) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(E) Provide for waiver to the extent permitted under "Buy National" legislation and regulations.

6. The FMD and its organizations will use their good offices and authority to achieve the established procurement objectives. This will include, in addition to the purchase of the F-5 aircraft, the following:

(A) Direction to Swiss industry on steps to be taken by Swiss industrial firms to make known their capabilities and products which might qualify for competitive procurement by U.S. industry and, to the extent necessary, by the DoD;

(B) Advice to Swiss industry on the necessary steps they must take to coordinate their efforts in responding to U.S. offers;

(C) Assistance to Swiss industry in meeting handling requirements for classified U.S. information.

7. The FMD and the DoD will appoint project officers to monitor progress toward the objective of this MOU. These project officers will meet periodically, but not less than annually, to review the progress of this understanding and recommend such action as may appear necessary to carry out its objective.

8. At the end of every two years, representatives of the parties hereto with appropriate representatives from the industrial sectors will meet to review progress under this MOU.

9. This Memorandum of Understanding is effective on the date on which it is signed, and shall remain in effect for eight years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

James R. Schlesinger
The Secretary of Defense of the United States of America

2 July 1975
(Date)

Rudolf Gnaegi
The Chief of the Federal Military Department of the Swiss Confederation

9 July 1975
(Date)

6-1316 Reserved.

Part 14 - Purchases from NATO Participating Country Sources

6-1400 Scope of Part. This Part implements the Memoranda of Understanding (MOU) between the United States and participating countries. (See 6-001.)

6-1401 Policy. In order to increase the defense capabilities of NATO through more efficient cooperation in the field of research and development, production and acquisition of defense equipment, the United States has entered into Memoranda of Understanding with Canada, the Federal Republic of Germany, the Government of Italy, the United Kingdom of Great Britain and Northern Ireland (U.K.), the Government of Norway, the Kingdom of the Netherlands, the Government of Portugal, the Government of Belgium, and the Government of Denmark. The objective of each MOU is to facilitate the defense of North America and Europe so as to achieve:

(i) greater cooperation in research, development, acquisition and production;

(ii) the most rational use of their respective industrial, economic and technological resources;

(iii) the greatest attainable military capability at the lowest possible cost;

(iv) greater standardization and interoperability of their weapon systems.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs between the participating countries and the United States and to ensure that sources from participating countries are provided every opportunity to compete on a fair and equal basis with U.S. sources for research and development and for production contracts consistent with 6-1402(b). Accomplishment of this policy requires exemption of foreign acquisition restrictions with respect to all items of defense equipment from participating countries.

6-1402 MOUs with NATO Participating Countries.

(a) The MOUs set forth acquisition policies with respect to defense equipment from sources in participating countries.

(b) Applicability: This Part applies except where restricted by (1) provisions of U.S. National Disclosure Policy (NDP), DoD Directive 5230.11; (2) U.S. defense mobilization base requirements as specified in 1-2207, (ii); (3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act, 6-300) and (4) U.S. Industrial Security Requirements.

6-1403 Procedures for Purchases from Participating Countries

6-1403.1 Solicitation Procedures

(a) Solicitation of Sources in Participating Countries.

(1) Participating country sources shall be included on bidders mailing lists and comparable source lists upon request by such sources in accordance with the procedures in 2-205. Requests of this nature should be forwarded by participating country sources to the activity having acquisition responsibility for the supplies involved.

(2) The normal criteria for soliciting and making awards under 1-700 for small business concerns and 1-800 for labor surplus area firms

shall be utilized without regard to the fact that there are potential participating country sources for the end product, except items developed under the U.S./Canadian Development Sharing Program (6-1406.1(b). Offers of a foreign end product shall not be considered on any acquisition, or part thereof, identified for the exclusive participation for such firms.

(3) Solicitations shall be sent directly to participating country sources appearing on the appropriate bidders mailing list except when restricted by 1-2207, 6-104.4(d), 6-1402(b), 6-1405 and (2) above. In addition, Canadian sources shall also be solicited through the Canadian Commercial Corporation in accordance with 6-504. When solicitation destinations are outside the United States, international airmail shall be utilized where security classification permits. (See 2-202.1, 2-203.1, 3-503.2.)

(4) Upon request, solicitations shall be furnished to the embassy or other designated place or representative of the participating country.

(5) If unusual technical or security requirements would preclude the acquisition of otherwise acceptable defense equipment from participating country sources, the need for such requirements should be specifically reviewed. Under no circumstances will unusual technical or security requirements be imposed solely for the purpose of precluding the acquisition of defense equipment from participating countries.

(6) Participating country sources shall not be automatically excluded from submitting offers because their supplies have not been tested and evaluated by a Department. Departments which find it necessary to limit solicitations to sources whose items have been service tested and evaluated by the department shall make provision for considering supplies from participating country sources which have been tested and accepted by the participating country for service use, subject to U.S. confirmatory test if necessary. Where it appears that these provisions might adversely delay service programs, the concurrence of the Department of Defense Acquisition Executive, OUSD (Research and Engineering), shall be obtained prior to exclusion of the participating country item from consideration. Sufficiency of participating country service testing should be considered on a case-by-case basis. When confirmatory tests of participating country end products are deemed necessary by the department, U.S. test and evaluation standards, policies, and procedures shall apply.

(7) Subject to 6-1402(b), industry representatives from a participating country shall be permitted to attend symposia, program briefings, prebid conferences (see 2-207 and 3-504.2), and like meetings which address U.S. defense equipment needs and requirements. When practical these meetings should be structured so as to allow attendance by representatives of participating country concerns.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36407

(b) Submissions of Offers.

Participating country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(c) Evaluation of Offers from Participating Country Sources.

(1) In furtherance of the objectives set forth in 6-1401, the Secretary of Defense has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act and the Balance of Payment Program with respect to acquisition of defense equipment (for items for civil works activities see 6-104.4(f)) which is mined, produced, or manufactured in a participating country.

(2) In accordance with the above, offers of participating country end products shall be evaluated without the application of the price differentials normally applied pursuant to the Buy American Act and Balance of Payments Program requirements contained in 6-104.4 and Section VI, Part 8. This exemption shall further include the following consideration: In the event that a domestic offer, a participating country offer, and a nonqualifying country offer compete for defense equipment, the participating country offer shall be evaluated without applying the price differentials of 6-104.4, whereas the nonqualifying country offer shall be subjected to the price differentials. (See 6-104.4(c), Example E.) However, in the event that the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted. (See 6-104.4(c), Example F.) In the event that a participating country offer competes against a nonqualifying country offer and no domestic offer is submitted, the participating country offer shall be evaluated on an equal basis with the nonqualifying country offer. (See 6-104.4(c), Example G.) Participating countries are listed at 6-1401 and defined at 6-001.

(3) As to any end product that is manufactured in the United States, all components from participating countries are treated as components mined, produced, or manufactured in the United States for the purpose of determining whether the end product is a domestic source end product.

(4) In keeping with the policy to enhance cooperation with the participating countries, U.S. duty-free entry shall be accorded supplies from participating countries by the issuance of duty-free entry certificates. Offers of defense equipment from participating country sources shall be evaluated without application of duty. Such duty-free entry shall be accorded whenever such supplies are acquired at a prime contract or at a subcontract level. (See also 6-602 for postaward circumstances of fixed-price-type contracts.) The resulting contract shall include the appropriate clause(s) referenced in 6-603.3.

(5) If, when evaluated in accordance with the above, an offer of a participating country end product is determined to be from the lowest, responsive, responsible offeror, the cognizant contracting officer shall normally proceed to make award to that offeror. However, there is no restriction on the authority or responsibility of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a participating country source in those instances

where such restriction or rejection is considered necessary for reasons of the national interest. (See 6-104.4(d).)

6-1403.2 Subcontracting with Participating Country Sources.

In reviewing prime contractor subcontracting procedures, the contracting officer shall assure that the prime contractor does not preclude participating country sources from competing for subcontracts, except when restricted by national security interest reasons or mobilization base considerations. (See 6-104.4(d) and 6-1405).

6-1403.3 Required Clause.

The clause at 7-104.106 shall be inserted in all solicitations and contracts for supplies and for services involving the furnishing of end items (e.g., leasing of equipment).

6-1403.4 Industrial Security for Participating Countries.

Required procedures designed to safeguard classified defense information which may be necessary for the performance of contracts awarded to participating country sources are set forth in the DoD Industrial Security Regulation, DoD 5220.22-R (implemented for the Army by AR 380-131; for the Navy by OPNAV Instruction 5540.8E; for the Air Force by AFR 205-4; for the Defense Logistics Agency by DLAM 8500.1; for the Defense Communications Agency by DCA Inst. 240-50-7; and for the Defense Mapping Agency by DMA Inst. 5220.22).

6-1404 Contract Administration.

When Contract Administration Services are requested on contracts to be performed in participating countries, except Canada (see 6-505), the request should be directed to the cognizant activity in accordance with DoD 4105.59-H, Section II, Part 2 (DoD Directory of Contract Administration Services Components). Contract Administration Services required with respect to DoD subcontracts placed by participating country sources, except Canada (see 6-505), in the United States will be arranged by the cognizant activity in accordance with DoD 4105.59-H, Section II, Part 2 (DoD Directory of Contract Administration Services Components).

6-1405 List of Excluded Items. The policies and procedures of this Part do not apply to offers of the following items of defense equipment unless the quantity being acquired is greater than that required to maintain the U.S. defense mobilization base. This restriction does not apply to Canadian Planned Producers (see 6-504.1(a)(2)). Items may be added to or deleted from the list from time to time. Information concerning this list may be obtained from OUSDRE(AP), International Acquisition. (See also 1-2207.)

Navy

Fuzes, Safe and Arm Devices, and Similar Items

MK-13 Safe and Arm Device
MK-13 Triggering Device
MK-17 Safe and Arm Device
MK-33 Safe and Arm Device
MK-330 Fuze

MK-334 Fuze
MK-404 Fuze
MK-407 Fuze
FMU-109 Fuze

Missiles and Missile Components

AIM-7F Sparrow Missile
Guidance and Controls Section
MK-58 Rocket Motors
MK-71 Warhead Metal Parts

AIM-9L Sidewinder Missile
Guidance and Control Section
MK-36 Rocket Motors
DSU-15 Target Detector
AN/WDU-17 Warhead
MK 1 Wing and AN/BSU-32 Fins

Trident I (C-4) Missile System
Guidance and Control System
MK-5 Electronic Assemblies (EA)
MK-5 Inertial Measurement Unit Electronics (IMUE) and Monitor Component Assembly (MCA)
Backfit of Poseidon (C-3) SSBNs

Flares

MK-46 Flares, Infrared Decoy

Sonobuoys and Components

AN/SSQ-36
AN/SSQ-41B
AN/SSQ-53A
AN/SSQ-57A
AN/SSQ-62

Ship Gun Systems

MK-75 Gun Mounts

Submarine Systems

Type 18B/D Periscope System
TR 155 K 33 Transducers

Military Sealift Cargo

Ocean Transportation and Services

Air Force

MAC Commercial Airlift
GAU-8/A and 30mm Ammo

Defense Logistics Agency

Textiles - Worsted

Army

L.A.P., Manufacturing & testing of projectiles (5.56mm through 8 inch), mines, dispensers, rockets, pyrotechnic devices, grenades, demolition charges, small arms ammunition and components, fuzes and components containing mechanical timing devices

TOW Missile and Launcher
2.75 Rocket Items
LAP Motor
Fin & Nozzle Assy
Stabilizer Rod
Felt Washer
Ring Charge Support
O Ring
Metal Spacer
Intervelometer
Igniter
Motor Tube
Seal Rings
Disc Charge Support
Spacer Charge Support
Lockwire
Launcher
Fin Blades
Projectile Metal Parts for Cartridge 105mm (Beehive)
Projectile M406, M107 - 155mm
Projectile M509 - 8 inch
Projectile M735
Projectile M735, Metal Parts and Cores
Projectile M718/M141
155mm Cannister, XM625, XM626:
Projectile Metal Parts for Cartridge 90mm
155mm Projectile, AT M718/M741 (RAAM): Component, Electronic Assemblies
Cartridge Case M118, M14B4
Fuze:
M1 Delay
MK-1
MK-30

MK-38 Energizer
MK-40 Energizer
MK-54
MK-73-13
MK-339-1/Inert
MK-379
MK-393/403
MK-404
MK-407
FMU-54B
M19
M42/46
M62A2
M91A2
M84A1
M114 S&A
M118 S&A
M201A1
M213
M19E1
M223
M228
M427/M423
M494/571
M505A3 (MPTS)
M505
M509A2
M564
M565
M567 (Comp Pts/Rewk)
M577/M582
M578
M578 (Comp Pts)
M732:
Elec Head Final Assy
Detonator
Power Supply
Sleeve
Elec Timer, W/IC
M904E3
Casing Burster Warhead, M156
Fin Assy M158, M170
Adapter Booster - M147, M148
Body Assy and Base Plug, M404
Bomb, M117A1E1
Launcher Rocket 2AU 68A/A
Warhead Flechets WDU 4A/A
M18 Mine Program
Blasting Cap, Firing Device, Metal Parts, Test Sets

Laser Range Finder VVC-2 and M21 for Solid State Ballistic Computer for M60 Series Tank
Limited Light Sight
MX-9644 Image Intensifer Tube 25mm
MX-7845 Image Intensifer Tube (1st generation)
MX-8501 Image Intensifer Tube (1st generation)
BA-4386 Battery
AN/PVS-4 Night Vision Sights
AN/PVS-5 Night Vision Goggles
AN/PVS-5A Night Vision Goggles
AN/VVS-2 Viewer
AN/VSS-3 Searchlight
Common Module Program (Thermal Imaging System)
Tactical Night Vision Systems -
AN/TAS-4
AN/TAS-5
AN/TAS-6
GLLD/TAS-4
Machine Gun M240
Machine Gun M240 Spare Parts
Electronic Time Fuze XM587E2/XM724
Power Supply PS127
Fuze Setter XM36E1
Tank Thermal Sights AN/VSG-2
Night Vision Goggles AN/PVS-5A
Image Intensifer Assy MX-9916/UV
Battery, Dry BA-4386
Maintenance of idle portions of 21 COCO facilities
Consolidated Facilities Scranton AAP
Hydraulic Turbine (Civil Works)

6-1406 Participating Country Agreements, Memoranda of Understanding and Accompanying Annexes. The following agreements, memoranda of understanding, and annexes are provided for information purposes only. Determination and Findings have been executed by the Secretary of Defense waiving the application of the Buy American Act in order to implement the MOUs contained in this Part.

6-1406.1 Canadian Agreements.

(a) Letter of Agreement With Canada.

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation. It shall remain in force from year to year until terminated by mutual consent; however, it can be terminated on the 31st day of December or the 30th day of June in any year by either party provided that six months notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements

facilitating procurement by each of the parties in the country of the other.

2.(a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies, and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. They shall also be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to Section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit varying rates of profit not exceeding in the case of cost reimbursement type contracts 7 - 1/2 percent of estimated cost plus, in certain cases, a bonus where cost savings have been demonstrated, and not exceeding in the case of negotiated fixed price contracts 10 percent of estimated cost. For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum DDP-31 of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of subparagraph (a) above, provided the rate or charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such contracts.

(c) The Canadian Government, its Department and Agencies, including but not limited to the Corporation and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided: Before refunding profits realized from the following sources:

(i) net profits of the Canadian Government, its Departments and Agencies, as defined above, with respect to contracts and subcontracts covered by this agreement.

(ii) excess profits referred to in paragraph (a) above, and

(iii) renegotiation recoveries from subcontracts of any tier under contracts covered by this agreement, which recoveries the Military Departments would otherwise be entitled to receive in accordance with the provisions of subparagraph (a) above;

the Corporation shall be entitled to deduct any losses it may sustain with respect to contracts covered by this agreement.

(d) Interim adjustments and refunds under this paragraph 2 shall be made at such time or times as may be mutually agreed upon but at least once a year as of June 30th. Such interim adjustments shall apply only to completed contracts. The final adjustment and refund shall be made as soon as practicable after the expiration of this agreement.

(e) The profit and loss provisions of this paragraph 2 shall not apply to contracts awarded to the Corporation as the result of formal competitive bidding (initiated by Invitation for Bids).

3.(a) All contracts placed by the Military Departments with the Corporation, except those placed as the result of formal competitive bidding, shall provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency, and for payment to be made in such currency. Therefore, quotations and invoices shall be submitted by the Corporation to the Military Departments in terms of Canadian currency, and such cost data, vouchers, etc., as the contracts require shall also be submitted in terms of Canadian currency. However, the Corporation may elect in respect of any of such contracts to quote, submit the said cost data, vouchers, etc., and receive payment in United States currency, in which event such contracts shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuations in exchange rates.

(b) All formal competitive bids shall be submitted by the Corporation in terms of United States currency and contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

4. The Military Departments and the Corporation shall avoid, to the extent consistent with the declared policies of the Military Departments and the Canadian Government, the making of any surcharges covering administration costs with respect to contracts placed with the Corporation by any of the Military Departments and contracts placed by the Military Departments in the United States for the Canadian Government.

5. To the extent that contracts placed with the Corporation by the Military Departments provide for the audit of costs and profits, such audit will be made without charge to the Military Departments by the Cost Inspection and Audit Division of the Treasury of Canada in

accordance with Costing Memorandum Form DDP-31 of the Department of Defence Production, Canada.

6. The Canadian Government shall arrange for inspection personnel of the Department of National Defence (Canada) to act on behalf of the Military Departments with respect to contracts placed by the Military Departments with the Corporation and with respect to subcontracts placed in Canada by United States contractors which are performing contracts for the Military Departments, and for the use of inspection facilities of the Department of National Defence (Canada) for such purposes, such personnel and facilities to be provided without cost to the Military Departments. The Military Departments shall provide and make no charge for inspection services and inspection facilities in connection with contracts placed in the United States by the Military Departments for the Canadian Government and with respect to subcontracts placed in the United States by Canadian contractors which are performing contracts for the Department of Defence Production* (Canada). The Department of National Defence (Canada) or any Military Department may provide liaison with the other's inspection personnel in connection with the foregoing. It is understood that either the Department of National Defence (Canada) or any Military Department may in appropriate cases arrange inspection by its own inspection organization in the other's country.

7. Because of the varying arrangements made by the Canadian Government and the Military Departments in furnishing Government-owned facilities (including buildings and machine tools) to contractors, it is recognized that the matter of inclusion in contract prices of charges, through amortization or otherwise, for use of such facilities will be determined in the negotiation of individual contracts. However, there shall be avoided, to the extent consistent with the policies of the Canadian Government and Military Departments, any such charges for use of Government-furnished facilities.

8.(a) The Corporation agrees that the prices set out in fixed-price type contracts covered by this Agreement will not include any taxes with respect to first-tier subcontracts; nor shall prices include custom duties to the extent refundable in accordance with Canadian law, paid upon the import of any materials, parts, or components incorporated or to be incorporated in the supplies, with respect to first-tier subcontracts.

(b) The Corporation agrees that under cost-reimbursement type contracts the Corporation shall, to the extent practicable with respect to first-tier subcontracts, exclude from its claims all taxes and to the extent refundable in accordance with Canadian Law, customs duties, paid upon the import of any materials, parts or components, incorporated or to be incorporated in the supplies and that any amounts included in such claims representing such taxes and duties shall be refunded or credited to the Military Departments.

(c) The Corporation agrees that to the extent that such taxes and duties can be reasonably and economically identified it will use its best endeavors to cause such taxes to be excluded from all subcontracts below the first tier and if found to be included to be recoverable and credited to the Military Departments.

9. The Corporation recognizes that existing law of the United States prohibits the use of the cost-plus-a-percentage-of-cost system of contracting.

10. Each contract covered by this agreement shall be deemed to include the provisions required by (i) Public Law 245, 82nd Congress of the United States (65 Stat. 700; 41 USC 153(c)) and (ii) Section 719 of Public Law 458, 83rd Congress of the United States (68 Stat. 353) or similar provisions that may be required by subsequent legislation.

(End of Agreement)

*now the Department of Supply and Services

(b) Cooperative Agreement with Canada.

MEMORANDUM OF UNDERSTANDING IN THE FIELD OF COOPERATIVE DEVELOPMENT BETWEEN THE UNITED STATES DEPARTMENT OF DEFENSE AND THE CANADIAN DEPARTMENT OF DEFENCE PRODUCTION

This Memorandum of Understanding complements the U.S.-Canadian Defence Production Sharing Program by establishing a cooperative agreement in defense research and development between the United States Department of Defense (DoD) and the Canadian Department of Defence of Production (CDDP), called the Defense Development Sharing Program.

1. Objectives:

The principle objectives of the Defense Development Sharing Program are:

a. To assist in maintaining the Defense Production Sharing Program at a high level by making it possible for Canadian firms to perform research and development work undertaken to meet the requirements of U.S. armed forces.

b. To utilize better the industrial scientific and technical resources of the United States and Canada in the interest of mutual defense.

c. To make possible the standardization and interchangeability of a larger amount of the equipment necessary for the defense of United States and Canada.

2. Description of the Program:

a. The Defense Development Sharing Program will consist of research and development projects (such program projects being here and after referred to as "projects"):

(1) which are performed by Canadian prime contractors;

(2) which are designed to meet specific DoD research and development requirements;

(3) in which the Military Department of DoD which is the United States party to the project agreement acts as the design authority; and

(4) which are jointly funded by DoD and CDDP, (Where DoD undertakes the research and development of a weapons system composed of several components, work funded by CDDP on one or more of such components will be considered to be jointly funded).

b. The Defense Development Sharing Program will not include efforts referred to in paragraph 13.

3. Funding:

The financial contribution of DoD in each project will not be less than 25 percent of the costs incurred subsequent to the date of the project agreement provided that in the case of work referred to in the parenthetical sentence of paragraph 2.a(4), the financial arrangements shall be as agreed to by DoD and CDDP in the project agreement.

4. Selection of Projects:

A proposal to initiate a project may be made by CDDP to any of the Military Departments of DoD or by any of the Military Departments of DoD to CDDP. Each proposal will contain a complete and detailed description of the scope of the project and work to be performed and of the suggested cost sharing arrangement. Projects will be selected by mutual agreement of CDDP in the Military Department of DoD concerned.

5. Project Agreements:

The specific terms and conditions of each project will be governed by a project agreement between the Military Department of DoD and CDDP. The project agreement will inter alia set forth the scope of the projects, the work to be performed, types of reports to be submitted, the time and funding schedules, and the cost of sharing arrangements.

6. Selection of Prime Contractors:

The selection of prime contractors for work to be performed under a project shall be subject to mutual agreement.

7. Contract Clauses for Projects:

The Canadian Government agencies responsible for placing and administering research and development contracts with Canadian firms, will insert suitable provisions in such contracts obtaining for DoD the same production rights, data, and information that DoD would obtain for itself if DoD were solely funding and placing the contract under its Armed Services Procurement Regulation.

8. Competitive Research and Development:

DoD will not engage in research and development which duplicate the work being carried out under any project unless DoD considers such research and development to be in the United States national interest. The appropriate DoD agency will notify CDDP before undertaking such duplicative research and development and will, if requested by CDDP, promptly enter into consultations with CDDP.

9. DoD Procurement of Researched Developed Items:

Procurement by DoD from Canadian firms of items developed in a project will be made under the Defense Production Sharing Program and in accordance with the DoD Armed Services Procurement Regulation. Pursuant to that Regulation, procurement of items developed by Canadian firms under the Defense Development Sharing Program will not be "set aside" for small business or for labor surplus areas.

10. Security:

a. Information and materials developed within projects will be considered to be jointly developed, and classification and declassification thereof will be determined jointly.

b. Classified information and materials exchanged in connection with or developed within projects will be safeguarded in accordance with the United States-Canadian Security Agreement of January 30, 1962, in the United States-Canadian Industrial Security Agreement effected by an exchange of letters dated February 6 and March 31, 1952, as amended.

11. Disclosure of Classified Information:

a. Classified information and materials received by either Government under the Defense Development Sharing Program but not developed within a project will not be disclosed or transferred to third

countries, or nationals of third countries, without the consent of the originating Government.

b. Jointly developed classified information materials will not be transferred or disclosed to any third party by either Government or nationals thereof without the consent of the other Government.

12. Sales:

a. Sales or transfers to any third party of items developed in a project containing classified information or materials will be subject to the provisions of paragraph 11.

b. Sales or transfers to NATO, Commonwealth, and SEATO countries, or nationals thereof, of jointly developed unclassified items may be made in accordance with any applicable arrangements between Canada and the United States regarding munitions control. Sales or transfers to any other third party of jointly developed unclassified items will not be made without the consent of both parties to this agreement.

c. Sales or transfers to any third party of jointly developed unclassified rights, information, or data necessary for the production of an item developed in a project will not be made without the consent of both parties to this agreement.

13. Other Research and Development Efforts not in Defense Development Sharing Program:

a. Consistent with normal DoD source selection procedures, Canadian firms may bid for DoD research and development contracts which are to be funded solely by the United States. DoD will evaluate proposals from qualified Canadian firms on a parity with proposals received from United States firms. CDDP undertakes to ensure that Canadian firms comply with DoD procurement procedures.

b. CDDP may award and solely fund research and development contracts to Canadian firms for the purpose of satisfying existing or anticipated DoD requirements. DoD and its Military Departments will not act as Design Authority for such contracts. In the event that the results of any such contract become of sufficient interest to DoD to warrant joint funding, the contract work may, upon mutual agreement, be made the subject of the Defense Development Sharing Program project.

14. Canadian Access to United States Information:

Subject to United States legislation and national policy, the Government of Canada will have access to information on the future requirements of DoD research and development programs and Canadian firms

will have the same access to DoD research and development program information as United States firms.

15. Supersession of Prior Arrangements:

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.

16. Effect and Duration:

This Memorandum of Understanding will remain inforce indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.

Charles M. Drury
Minister of Defence Production
Date: 21 November 1963

Robert S. McNamara
Secretary of Defense
Date: 16 November 1963

6-1406.2 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO THE PRINCIPLES GOVERNING COOPERATION IN R&D, PRODUCTION, AND PROCUREMENT OF DEFENSE EQUIPMENT (SHORT TITLE: COOPERATION ARRANGEMENT).

The Government of the United States (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG), hereinafter referred to as the Governments, are developing high technology weapons systems and other advanced items of defense equipment and are seeking to achieve greater cooperation in research, development, production and procurement in these areas in order to make the most rational use of their respective industrial, economic and technological resources, to achieve the greatest attainable military capability at the lowest possible cost, and to achieve greater standardization and interoperability of their weapons systems.

The Governments already have an Arrangement dated May 1963 for Joint Military Development and the USG has certain offset arrangements with HMG against purchases by HMG of major weapons systems and items of defense equipment.

In order to further the above aims, the Governments have decided to enter into an understanding and this Memorandum sets out the guiding principles governing mutual cooperation in defense equipment production and purchasing and associated offset arrangements. This Memorandum is intended to fit into the broader context of NATO Rationalization/

Standardization and to be compatible with any NATO arrangement that might subsequently be negotiated.

SECTION A: PRINCIPLES GOVERNING RECIPROCAL DEFENSE PURCHASING

1. Each Government has established its policies for strengthening the mechanisms essential to increasing cooperation in research, development, and production and procurement of military systems. In keeping with these policies, and in the interests of enhancing their mutual security and to assist the Governments in discharging better their mutual defense obligations, it is understood that the Governments will cooperate in all respects practicable, to the end that defense equipment production and procurement efforts of the two countries be administered so as to assure the maintenance of a long term and equitable balance in reciprocal purchasing of defense equipment. This balance will be at levels to be mutually determined.

2. The following principles to facilitate these objectives have been decided upon by the Governments:

a. Both Governments will provide appropriate policy guidance and administrative procedures within their respective Defense procurement organizations to achieve and maintain the agreed-upon balance of reciprocal Defense purchases.

b. The Governments will identify and nominate for consideration by each other items of defense equipment believed suitable to satisfy their respective requirements. The Governments will decide between them, to which items of defense equipment purchases this Memorandum of Understanding (MOU) will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis.

c. The detailed implementing procedures to be arranged will incorporate the following:

(i) Offers will be evaluated without applying price differentials under Buy-National laws and regulations consistent with national laws and regulations.

(ii) Offers will be evaluated without the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

(iii) Full consideration will be given to all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office.

(iv) Offers will be required to satisfy requirements for performance, quality, delivery, and cost.

d. To facilitate production programs set up in implementation of this MOU, the Governments understand that subject to their established policies, procedures, regulations and subject to privately owned proprietary rights, each Government will, so far as it is able, release to the other and to its agents of information and technology necessary for the purposes of such facilitation.

e. The Governments, through their appropriate representative, will consult concerning any problems which may inhibit the efficient operation of this arrangement. Such consultations will be conducted on the basis of SECTION B of this MOU.

SECTION B: IMPLEMENTATION MACHINERY

1. Both Governments understand that detailed implementing procedures need to be considered and decided upon in order to carry out the provisions of this MOU. Representatives of the Governments will be appointed to develop a coordinated program of such implementing procedures, and to discuss procurement and production needs of the Governments. These representatives will meet as required.

2. The Director, Defense Security Assistance Agency, under the policy guidance of the Assistant Secretary of Defense (International Security Affairs), and in coordination with the Director, Defense Research and Engineering, the Assistant Secretary of Defense (Installations and Logistics and other DoD offices will be the focal point in the US Government for the development of an overall coordinated program of implementing procedures under this MOU. The Director, Defense Research and Engineering will be responsible for matters under this MOU touching upon research, development, test and evaluation as they relate to bilateral arrangements for joint military development. The Assistant Secretary of Defense (Installations and Logistics) will be responsible for managing procurement and production matters under this MOU on a continuing basis, in coordination with OASD(ISA), DSAA and other appropriate DoD offices.

3. The Head of Defense Sales, MOD, under the policy guidance of the Minister of State for Defence, and in consultation, as appropriate with the Chairman and members of the MOD Defence Equipment Policy Committee, will be responsible on the UK side for the development of an overall coordinated program of implementing procedures under this Memorandum of Understanding.

SECTION C: INDUSTRIAL PARTICIPATION

1. Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36415

2. Implementation of this MOU will involve full industrial participating. Accordingly, the Governments will arrange that their respective procurement and requirements offices will be made familiar with the principles and objectives of this MOU. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

SECTION D: TERMINATION

1. This MOU will be terminated on 1 January 1985 unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this MOU before 1 January 1985, any proposal for termination will be the subject of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination.

SECTION E: FURTHER COOPERATION

Annexes subsequently negotiated by the responsible offices and endorsed by appropriate Governmental authorities will form an integral part of this Memorandum of Understanding.

SECTION F: EFFECTIVE DATE

This Memorandum of Understanding will come into operation upon signature by the Governments.

Signed in duplicate at London this 24th day of September 1975.

James R. Schlesinger
For the Government of the United States

Roy Mason
For the Government of the United Kingdom of Great Britain and Northern Ireland

Date 24 September 1975

ANNEX I

Implementing Procedures for the "Memorandum of Understanding between the Government of the United States and the Government of Great Britain and Northern Ireland Relating to the Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment" of 24 September 1975.

I INTRODUCTION

On 24 September 1975 the Governments of the United States (US) and the United Kingdom (UK) signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment". The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II MAJOR PRINCIPLES

A. Both the US and UK will consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed and produced in the other country. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation. The responsible governmental purchasing agencies in each country will seek to inform themselves of the defense items which might be available from the other country to meet specific requirements.

B. Offers will be evaluated without applying price differentials under Buy-National laws and regulations.

C. Offers will be evaluated without consideration of the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

D. Full consideration will be given to all qualified industrial and/or Government sources in both the US and UK consistent with the policies and criteria of the respective purchasing agencies.

E. Offers will be required to satisfy requirements for performance, quality, delivery, continued logistic support, and cost. In preparing Invitations for Bids and Requests for Proposals, and in evaluating Offers, where applicable and consistent with national laws and regulations full consideration will be given to potential NATO savings and/or increased NATO combat capability expected to result from the procurement of items that are standardized or interoperable with those of the Allies.

III ACTION

In implementing the MOU both countries will review and, where considered necessary, revise defense policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be

compatible with the broad aims of NATO Rationalization/Standardization are taken into account. In addition both countries will:

A. Ensure that their respective requirement offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU, which are complemented by the "Arrangements for Joint Military Development by the US and the UK" of 1963.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist industries in carrying out the supporting actions to maximize industrial participation.

F. Review defense items submitted as candidates for respective requirements. Indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility.

G. Make best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

H. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements (for the maintenance of a defense mobilization base) are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from nonnational sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

I. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

IV COUNTING PROCEDURES

The US and UK Governments will decide between them to which items of defense equipment this MOU will apply but in principle all defense items (and associated services included in a procurement contract) purchased

by either country will be counted against the goals of this MOU as long as they meet the following criteria:

A. Direct purchases by either Government from the other, including its Agencies;

B. Direct purchases by either Government from the industry of the other country;

C. Purchases by Industry from the Government or Industry of the other country in aid of Government defense contracts;

D. Purchases by a third country government from either US or UK Government or industrial sources as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded projects to which the US and/or UK are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The applicability of such purchases to this MOU will be agreed between MOD/OSD in each case.

F. License fees, royalties and other associated income resulting from orders placed by Industry and/or Government with a licensed company in the other country.

V ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual US/UK Statement of the current balance, and long term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any

US-UK Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B above.

HOWARD M. FISH
For the Government of the United States

2 April 1976
Date

R. Anderson
For the Government of the United Kingdom of Great Britain and Northern Ireland

2 April 1976
Date

ANNEX II

MUTUAL ACCEPTANCE OF TEST AND EVALUATION

INTRODUCTION

1. In furtherance of the principles governing reciprocal Defence purchasing, as defined in the subject Memorandum of Understanding (MOU) and in accordance with the Implementing Procedures for the MOU (Annex I thereto), representatives of the US Department of Defense (DoD) and the UK Ministry of Defence (MOD) have engaged in discussions and presentations on Test and Evaluation (T&E) in Defence procurement. The discussions were aimed at facilitating the implementation of the MOU by:

a. Bringing about a thorough, mutual understanding of the two governments' policies, organizations and procedures for T&E.

b. Identifying the main differences between the two governments' organisations and procedures for T&E.

c. Determining the actions required to overcome any difficulties arising from the identified differences, in order to assure complete mutual acceptability of T&E procedures.

2. The purpose of this Annex, drawn up in accordance with Section E of the MOU, is to record the concurrence reached by the two governments concerning the mutual acceptability of their respective T&E procedures for those systems that are developed in one country and are candidates for procurement by the other. Two categories of Defence systems are considered:

a. Those still under development.

b. Those for which development is complete.

POINTS OF CONCURRENCE

3. The objective is to avoid redundant testing. Neither government will duplicate tests where acceptable data is available from the other government's official test programs.

4. Existing T&E organisations and procedures of both governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either government.

5. To achieve a more widespread understanding of the two governments' T&E organisations and procedures in the US DoD, in the UK MOD, and in the Industries of both countries, the two governments will produce guidance information necessary to meet the purpose of this Annex, including:

a. The relationship between their respective T&E organizations and procedures.

b. A US DoD-UK MOD communications matrix for initial contacts.

6. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Services' independent operational test agency and in the UK, the Project Manager.

MUTUAL ACCEPTANCE PROCEDURES

7. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations:

a. To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be similar to the US Navy's Test and Evaluation Master Plan (TEMP) as outlined in OPNAV Instruction 3960.10.

b. For systems under development, the offering government will invite participation by the other early in the T&E program. Should the other government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of information necessary for the purposes of such T&E.

c. For systems for which development is complete, the offering government will ensure, subject to its laws, established policies,

procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d. Should one government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the two governments will decide by mutual agreement on any additional testing to be carried out. Such additional testing may be conducted by either country as mutually agreed. In addition, before such additional testing commences, concurrence will be reached by the two governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either government releases T&E data to the other, it is understood that, in the absence of any specific agreement to the contrary, such data is made available in confidence to the receiving government for the purpose of information and evaluation within such government and for no other use.

f. Each government will mark data transmitted to the other with a legend that will indicate the country of origin and the conditions of release, that the data relates to this MOU, and that is is furnished in confidence. Where appropriate the security classification will be shown. Corresponding arrangements will be made for records of data transmitted orally.

g. Each government will make its best effort to protect data submitted in confidence by the other government. In the event of any request under domestic legislation to make available to the public such data furnished by the other government, the recipient government will take all legal steps available to it to withhold the data from disclosure.

8. In any case where agreement cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority. For the US this will be the Director Defense Test and Evaluation and for the UK this will be the appropriate Systems Controller.

William J. Perry	Sir Clifford Conford
For the Government of the United States	For the Government of the United Kingdom of Great Britain and Northern Ireland
9 October 1978	9 October 1978
Date	Date

ANNEX III

RECIPROCAL AUDITS OF CONTRACTS AND SUBCONTRACTS

I GENERAL

The US/UK Memorandum of Understanding on Co-operation Arrangements envisages the need for detailed implementing procedures to be decided upon. This Annex deals with reciprocity in the handling of auditing activity related to contracts and sub-contracts falling within the scope of the MOU.

The participating Governments recognize the mutual benefit of undertaking reciprocally for each other in their respective countries price proposal audits and contract cost audits in connection with the acquisition of defence equipment. As used in this Annex the term "audit" may include, but is not limited to, the following services including Field Pricing Support as appropriate to the contract or sub-contract concerned:

- Survey of contractor's capability;
- Pre-contract audit;
- Audit during contract performance;
- Audit after contract performance, e.g. termination, before payment of final price in respect of fixed price contract or cost type contract;
- Verification of compliance with requirements set forth by the purchasing government for accounting of contract costs or pricing;
- Verification after contract award of the currency, accuracy and completeness of data supporting a contractor's price proposal.

II PURPOSE AND SCOPE OF AUDITS

The purpose of these audits will be to examine proposed or incurred costs and supporting data in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or sub-contractor.

Audits performed under the provisions of this Annex will cover all elements of cost and identify profit amounts. The auditors will use to the fullest extent possible previously available data pertinent to the intended or actual contract or sub-contract.

III AUDIT AGENCIES

The audits will be performed pursuant to the provisions of this Annex by the following agencies:

- For audits in the United States when requested by the United Kingdom Government, the Defense Contract Audit Agency (DCAA).

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

- For audits in the United Kingdom when requested by the United States Government, the Accountancy Services (AS(PE)) of the Ministry of Defence.

IV AUDIT REQUEST PROCEDURES

Requests for audits will be transmitted as follows:

Requests by the United Kingdom Government:

- Cognizant Procuring Contracting Office for Acquisitions under U.S. Foreign Military Sales (FMS) procedures.
- The Director of Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22314, for all other acquisitions.

Requests by the United States Government:

- Head of Contracts Policy, Procurement Executive, Ministry of Defence.

These requests will be transmitted with all the supporting documents and required format of the audit report.

V OPERATING RULES

Before any relevant contract action commences, representatives of each Government will consult with one another as necessary to define the goals and the scope of the audits required.

The audits will pay regard to the Government accounting conventions applicable to the supplier's business and be performed in accordance with the terms of the contract or sub-contract as required by the law and policy of the purchasing Government.

Each Government will accept auditing services performed on its behalf by the other as if it had performed those services itself as long as these reflect the particular or specific interest of the purchasing authority.

Each Government will make available to the other data pertinent to the relevant contract or sub-contract, including that associated with disclosed accounting practices, in support of the contracting officer's negotiation activity.

Applicable contracts or sub-contracts will invoke the provisions of this Annex.

Each audit report will respond to the questions contained in the request for audit and will detail any problems encountered during the

audit. The report should enable the contracting officer to evaluate independently the acceptability of the price proposals or costs.

Upon request of the contracting officer, additional information, supporting data, and explanations or clarifications will be provided to him or to his duly authorized representatives. The contracting officer will have the final authority to determine when adequate audit information has been provided for negotiation purposes.

Each Government will endeavor that in all possible cases its agencies will perform audits under the provisions of this Annex. If, due to extraordinary circumstances, a Government is unable to perform an audit, or to perform it in a reasonable time, the contracting country's agencies would have a right to perform the audit themselves.

VI PROTECTION OF INFORMATION

Each audit report will be prepared by the audit agency and submitted in confidence. No report, or data therein, will be disclosed to third parties unless the cognizant authorities of both parties and the audited supplier deem this to be appropriate. However, the contracting officer will normally release the final results of audits of sub-contractors to higher tier contractors for negotiation pruposes. Specific information or extracts from the report may only be given to higher tier contractors in accordance with any directions or qualifications contained in the audit report.

Data obtained through the implementation of this Annex will receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which receives it.

VII NATIONAL SECURITY

Access to classified information involving the national security of each country will be governed by the provisions of the MOU.

William Levitt	Leonard Salthouse
United States	United Kingdom
21 June 1979	21 June 1979
(date)	(date)

6-1406.3 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF NORWAY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Norway hereinafter referred to as the Governments:

- Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production and procurement of defense equipment, in order to:

  - Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies; and

  - Promote the widest possible use of standard or interoperable equipment; and

  - Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

- Noting that no general agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past; and

- Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment

have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles government mutual cooperation in defense equipment research and development, production and procurement.

The Government of the United States of America and the Government of Norway conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements or the relevant provisions of such agreements between the Independent European Program Group (IEPG) and the United States of America shall take precedence over this Memorandum of Understanding, assuming Norway is a party to such agreements.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to achieve and maintain a long-term equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. Equitable balance, in principle, shall be achieved when the two Governments have exhausted all means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent permitted by the size and nature of each country's technological and industrial base.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production and procurement, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with the laws, regulations, and practices having the force of law of each Government, give full consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their relevant industries.

5. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of equipment that might be suitable for use by the other Government. Indicative lists are provided in the annexes.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement

organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurement or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit. This includes the removal of customs duties and other discriminatory levies as well as the waiver of protectionist provisions.

9. Normal competitive contracting procedures shall be used in acquiring items of conventional defense equipment developed in each other's country for use by either country's defense establishment.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Government.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

14. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for a Norwegian-

American Committee for Reciprocal Procurement, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Government of Norway for any matter relating to the procedures for implementing this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

36422 Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

2. The operating procedures for the implementation of the General Security of Information Agreement dated 26 February 1970 between the United States Department of Defense and the Norwegian Ministry of Defense apply to activities under this Memorandum of Understanding.

ARTICLE V

Duration

1. This agreement will remain in effect for a ten-year period following its signing, unless otherwise agreed by both Governments.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Norway Statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway offset agreements in force when the Memorandum of Understanding was signed, and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this Memorandum of Understanding and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Norway upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Norwegian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the Government of Norway The Minister of Defense	For the United States Government The Secretary of Defense
Rolf Hansen Date May 19, 1978	Harold Brown Date May 19, 1978

ANNEX 1

I. INTRODUCTION

On 1978 the Governments of the United States (US) and Norway signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment." The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II. MAJOR PRINCIPLES

A. The US Department of Defense (DoD) and the Ministry of Defence of Norway (MOD) will each consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed or produced in the other country. (See also Paragraph III of this Annex). MOD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the Memorandum of Understanding and this Annex.

B. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

III. ACTION

In implementing the MOU, DoD and MOD will review and, where considered necessary revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and the MOD agree that having taken the measures listed below, they will have fulfilled their obligation under Paragraph 1, Article I, of the MOU, to exhaust all means at their disposal to maximize defense R&D cooperation and reciprocal procurement. These measures will be utilized in a reasonable manner recognizing among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Ensure that, consistently with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation.

F. Assist industries in their respective countries to identify and adivse the other government of their capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely

fashion to ensure adequate time for their respective industries to participate in the development or production procurement process.

H. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

I. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements such as the maintenance of a defense mobilization base are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from non-national sources, should be identified as soon as possible in lists drawn up by MOU and OSD for their respective countries, and that the position should be kept under review at this level.

J. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

K. Both DoD and MOD will from time to time arrange visits by relevant personnel to the other country in order to actively explore possibilities for R&D cooperation and procurement.

IV. COUNTING PROCEDURES

The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MOD. In principle (1) all items procured by the overseas Base Exchanges and Commissary Operations for resale overseas shall be counted and (2) all defense items (and associated services included in a procurement contract) purchased by DoD and MOD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

C. Purchases by industry from the government or industry of the other country in aid of government defense contracts.

D. Purchases by a third country government from the governments of the United States or of Norway or from industries of the two countries as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded defense projects to which the United States and/or Norway are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

V. ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defence level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual United States/Norway Statement of the current balance and long-term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B. above.

D. Quality Assurance procedures outlined in STANAG 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the National laws and regulations of each country.

United States Government | For the Government of Norway

6-1406.4 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of the Netherlands, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research and development, production and procurement in order to:

- Make the most cost-effective and rational use of the resources available for defense,

- Ensure the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Recalling that they had agreed, as members of the Alliance, to maximum cooperation in procurement as set forth in Annex A to NATO Document C-M(73)51 (revised), dated 20 August 1973,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research and development, production and procurement of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent Europe Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance and that this cooperation will be carried out pursuant to the Mutual Defense Assistance Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands, signed 27 January 1950.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research and development, production and procurement of conventonal defense equipment, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organization to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid for proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement of those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

13. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Netherlands-U.S. Committee for Procurement Cooperation.

2. The Under Secretary of Defense for Research and Engineering, in cooperation with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower,

Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementating procedures under this MOU.

3. The Director General for Materiel in the Ministry of Defense, in cooperation with other appropriate government authorities, will be the responsible authority of the Government of the Netherlands for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

ARTICLE V

Administration

1. The Netherlands-U.S. Committee for Procurement Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of, and

keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Netherlands statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed. Such statement will take account of United States-Netherlands purchases of defense equipment and services and related offset agreements effected in the years from 1973 onwards and will be periodically reviewed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for succesive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

3. The Parties hereto agree that, for the purposes of this MOU, references to the Kingdom of the Netherlands shall apply only to its territory in Europe.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands
The Minister of Defense

Willem Scholten

Date August 24, 1978

For the Government of the United States of America
The Secretary of Defense

Harold Brown

Date July 25, 1978

ANNEX I

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 24 August 1978, the Governments of the United States and the Kingdom of the Netherlands signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation is research and development, production and procurement of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MOU.

2. MAJOR PRINICPLES

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of the Netherlands (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

B. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning, intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into

account. DoD and MoD agree that the following measures shall be taken, recognizing that among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, are considerations related to insure free and full competition for the award of contracts:

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

B. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MoU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MoU.

D. Ensure wide dissemination of the basic understanding of this MoU to their respective industries producing and/or developing defense items and/or services.

E. Ensure that, consistent with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations, or the cost of import duties. Full consideration will be given to all qualified industrial and/or governmental sources in each other's country. Provisions will be made for duty-free entry certificates and related documentation to the extent that existing laws and regulations permit.

F. Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items and requests for services submitted by the other country as candidates for respective requirements. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development production and procurement processes.

H. Use best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

I. Ensure that those items and services excluded from consideration under this MoU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and

services that must be excluded from consideration under this MoU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

J. Insure that the balance of reciprocal purchases takes into consideration the levels of technology involved, as well as the monetary value of purchase hereunder.

K. DoD and MoD will from time to time arrange visits in order to actively explore possibilities for cooperation on research and development, procurement, and logistical support.

4. COUNTING PROCEDURES

The following purchases, to be identified jointly by DoD and MoD will be included in the counting procedures:

A. Purchases of items and services funded from appropriate funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense and which, either/are:

(1) directly purchased by the MoD or DoD from one another; or

(2) directly purchased by the MoD or DoD from the industry of the other country; or

(3) purchased by the industry of one country from the Government or industry of the other country; or

(4) purchased as a result of jointly funded defense projects to which the United States and the Netherlands are the only contributors to be credited in proportion to each other country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MoU will be agreed upon between MoD and DoD in each case;

(5) license fees, royalties and other associated income, when separately contracted, by industry and/or DoD or MoD with a licensor in the other country.

B. Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

C. Purchases by a third country government from the MoD or DoD or from industries of these two countries as direct result of the efforts of the government of the other country.

5. ADMINISTRATION

A. Each government will designate points of contact (procurement and logistics) at the Ministry of Defense level and in each purchasing service/agency and major acquisition activity.

B. Quality Assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reserve concerning reimbursement) will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement of services provided shall be afforded in accordance with the national laws and regulations of each country.

C. The terms of reference of the Netherlands/United States Committee of Procurement Cooperation is contained in Annex III.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 22 December 1978	Date 22 December 1978

(Appendices to Annex 1 not included)

ANNEX II

Principles Governing Logistic Support of Common Equipment

In implementing Article I, para 13, of the MoU, the two Parties shall be governed by the following:

1. When developing or procuring defense equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistic support and other forms of logistic cooperation, e.g., joint utilization of facilities.

3. In the contracting procedure for logistic support, paragraph 9 of Article I of the MoU shall apply.

4. Both Parties will issue directives and guidelines to their respective armament and logistics agencies to achieve the described goals of this MoU.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

ANNEX III

TERMS OF REFERENCES

1. The Netherlands/U.S. Committee for Procurement Cooperation (hereafter to be called "the Committee") will serve, under the direct responsibility of the authorities, listed in Article II sub 2 and 3 of the MoU respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring that the guiding principles of the MoU governing the mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment are being implemented to facilitate a mutual flow of defense equipment. To this end the Committee will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

A. They will discuss research, development, production, procurement and logistic support needs of such country and the likely areas of cooperation including joint activities in those fields.

B. They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

C. They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

D. They will consider any other matters relevant to the MoU.

E. They will report after each meeting and advise as appropriate.

F. The Committee will alternately meet in the United States and in the Netherlands. The country in which a particular meeting will take place will provide the Chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

6-1406.5 MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense; and

- Promote the widest possible use of standard of interoperable equipment; and

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree

that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding.

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

1.7 Both Parties will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described herein.

1.8 The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duty; customs and import duties should not be charged as far as this is admissible under current laws.

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Party for performance, quality, delivery and costs.

1.9 Competitive contracting procedures shall normally be used in acquiring items of conventional defense equipment developed or produced in each other's country for use by either country's defense establishment.

1.10 Both Parties will ensure that the technical data packages (TDPs) made available under this Memorandum of Understanding are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Party.

1.11 Both Parties will undertake their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two contracting parties will mutually make available to each other, to the extent possible, all information and proprietary rights required to implement cooperation under this agreement. The two contracting parties will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements, between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Party, be established concerning follow-on logistic support for items of defense equipment acquired pursuant to this Memorandum of Understanding.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36451

Both Parties will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

2.1 The DoD and MoD will appoint representatives to determine in detail the procedures for implementing this Memorandum of Understanding and the terms of reference for a German-American Committee for Mutual Cooperation.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority of the United States Department of Defense for the development of implementing procedures under this Memorandum of Understanding.

2.3 The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Ministry of Defense of Germany for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

3.1 Implementation of this Memorandum of Understanding will involve full industrial participation. Primary responsibility for finding business opportunities shall rest with the industries of each country.

3.2 Each Party will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Parties will take all appropriate implementing guidance. Both Parties will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 Also, the Parties will arrange to familiarize their respective procurement and requirements offices with the principles and objectives enunciated herein.

ARTICLE IV

Security

4.1 The operating procedures for the implementation of the General Security of Information Agreement dated 23 December 1960 between the two Parties, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Party for security purposes, the other Party shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Party throughout the period during which the classifying Party may maintain such classification.

4.3 Information that has been provided by either of the Parties to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Party will mark such information furnished with a legend indicating the origin of information, that the information relates to the MOU and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

5.1 Each Party will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

5.2 The German-American Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Party to review progress in implementing the Memorandum of Understanding. It will discuss development, production, procurement and logistic support needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this Memorandum of Understanding.

ARTICLE VI

Duration

6.1 This Memorandum of Understanding will remain in effect for a six-year period following its signing. Unless otherwise agreed by both Parties, the duration will be extended for another six years.

6.2 If, however, either Party considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the six-year period, or any extension thereof, written notification of its intention will be given to the other Party six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Party to enable the Parties fully to

evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the Parties, any h contract entered into consistent with the terms of this Memorandum of Understanding shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VII

Implementation

7.1 Each Party must agree in writing to any amendment of this Memorandum of Understanding.

7.2 Details pertaining to implementation of the principles set forth herein will be set out in annexes to this Memorandum of Understanding.

7.3 Any differences of opinion over the interpretation and implementation of this Agreement and its Annexes shall be resolved by consultation between the DoD and MoD.

7.4 This Memorandum of Understanding will come into effect on the date of the last signature.

The Secretary of Defense of the United States of America	The Federal Minister of Defense of the Federal Republic of Germany
Harold Brown	Hans Apel
Date October 17, 1978	October 17, 1978

6-1406.6 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF ITALY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Italy, hereinafter referred to as "the Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement, and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies, assuring the most satisfactory level of reciprocal balance; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

Noting that no agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past, and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles governing mutual cooperation in defense equipment research and development, production, procurement and logistic support.

The Government of the United States of America and the Government of Italy conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North American within the Alliance.

All agreements, or the relevant provisions contained therein, between the Independent European Program Group (IEPG) and the United States of America, shall take precedence over this Memorandum of Understanding, provided that Italy is a party to the specific agreement.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base. Items procured under offset agreements by either Government with an industry of the other

will apply to the achievement of the balance contemplated by this agreement.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement, and logistic support complementing the work of the Conference of National Armament Directors (CNAD), Senior NATO Logisticians Conference (SNLC) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their laws and regulations give full consideration to all requests for cooperative R&D and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their defense industries.

5. In the interests of standardization and the effective utilization of scarce resources the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of defense equipment that might be suitable for use by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurements or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit, such as not applying customs duties and other discriminatory levies in evaluating bids submitted in accordance with this MOU, as well as the waiver of protectionist provisions. Defense items or services are those items or services which may be procured utilizing appropriated funds of the US Department of Defense or budgeted funds of the Italian Ministry of Defense.

9. Competitive contracting procedures normally shall be used in acquiring items of conventional defense equipment developed in each other's country.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations, and arms transfer policy. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may I_c ?age or infringe upon licensing arrangements whereby commercial firms in the US or Italy have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third-country.

13. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferees without the prior written consent of the originating Government.

14. Both Governments will undertake their best efforts to assist in negotiating licenses, ties and technical information exchanges with their respective industries.

15. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for an Italian-American Committee for Mutual Cooperation, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The National Armament Director in the Ministry of Defense, in coordination with the other appropriate governmental bodies, will be the responsible authority of the Government of Italy for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the defense industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to familiarize their respective procurement and requirements offices with the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by either Government for security

purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security Information Agreement dated 4 August 1964 between the United States Department of Defense and the Italian Ministry of Defense apply to activities under this Memorandum of Understanding.

3. Information that has been provided by the GOI to the United States in confidence, or produced by the United States pursuant to a written joint arrangement with GOI requiring confidentiality, shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the GOI. To assist in providing the desired protection, the GOI will mark such information furnished to the US Government with a legend indicating that the information is of Italian Government origin, that the information relates to this MOU, and that the information is furnished in confidence.

ARTICLE V

Duration

1. This Agreement will remain in effect for a ten-year period following its signing. Unless otherwise agreed by both Governments, the duration will be extended for another ten years.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Government fully to evaluate the consequences of such termination and in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review and promoting any correction step, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Italy statement of the current balance, and long-term trends of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States/Italy offset agreements in force when the Memorandum of Understanding was signed and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this agreement and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Italy upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government	For the Government of the Italian Republic
Harold Brown	Attilio Ruffini
Date 11 September 1978	11 September 1978

6-1406.7 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Portugal, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research, development, production, procurement, and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,
- Ensure the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement, and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defence items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defence establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by natonal laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Portugal-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Director General of Armaments and the Secretary of State for Light Industry will be the responsible authorities of the Government of Portugal for the development of implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification

designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information, that the information relates to the "Memorandum of Understanding" and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Portugal-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Portugal statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take

such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America The Secretary of Defense	For the Government of Portugal The Minister of Defense
Harold Brown	
Date 28 March 1979	18 December 1978

ANNEX I

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 28 March 1979, the Government of the United States and the Government of Portugal signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production, procurement, and logistic support of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MoU.

2. MAJOR PRINCIPLES

2.1 The U.S. Department of Defense (DoD) and the Ministry of Defense of Portugal (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

2.2 It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed acquisition

procedures and regulations of the purchasing nation. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MoU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process are considerations, DoD and MoD agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1 Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

3.2 Ensure that their respective research and development offices are familiar with the principles and objectives of this MoU.

3.3 Ensure that their respective acquisition offices are familiar with the principles and objectives of this MoU.

3.4 Ensure wide dissemination of the basic understanding of this MoU to their respective defense industries.

3.5 Ensure that, to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers either price differentials under buy-national laws and regulations, or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation to the extent consistent with national laws and procedures.

3.6 Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to optimize industrial participation.

3.7 Review defense items and requests for services submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their industries to participate in the acquisition process.

3.8 Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36429

3.9 Permit the sales of equipment produced under license to Allied countries, and to appropriate third countries, subject to the policy outlined in Article I, paragraph 12 of the basic MoU. Each agreement for a joint development or coproduction will address transfers of items or technology to Allied or third countries.

3.10 Ensure that those items and services excluded from consideration under this MoU for reasons of protecting overriding national requirements, such as the maintenance of a defense mobilization base (Appendix 1), are limited to a small percentage of total annual defense acquisition spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on acquisition from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

3.11 Ensure that the balance of reciprocal purchasing within the areas of this MoU take into consideration the levels of technology involved, as well as the contractual value, in accordance with the policy outlined in Article 1, paragraph 1 of the basic MoU.

3.12 Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for acquisition and logistic support.

4. COUNTING PROCEDURES

4.1 The purchases to be counted against the goals of the MoU will be identified jointly by DoD and MoD. In principle, all defense items or components thereof, as defined in the basic MoU, and associated services included in a procurement contract, purchased by MoD and DoD from the other country will be counted against the goals of the MoU as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

4.1.2 Purchases by either the MoD or DoD from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from either US or Portuguese Government or industrial sources as a direct result of commercial efforts of the other, non-supplying country.

4.1.5 Acquisitions by either country of defense items resulting from common funded projects to which the US and Portugal are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such acquisitions will be counted against the goals of the MoU will be, at the time of procurement, mutually agreed between MoD and DoD on a case by case basis.

4.1.6 License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

4.2 The following non-defense items also will be counted against the goals of the MoU:

4.2.1 Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

4.2.2 Purchases by a third country government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country.

5. ADMINISTRATION

5.1 Each country will designate points of contact at the Ministry of Defense level.

5.2 MoD and DoD representatives will meet periodically, alternately in each country, to review the projects undertaken in implementing the MoU. They will discuss acquisition and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in paragraph 5.3 below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MoU. Specific tasks of the representatives are:

5.2.1 Review the status of acquisitions on the basis of the data available concerning such acquisitions, in comparable terms to be agreed upon by both Parties.

5.2.2 Consider additional steps necessary to facilitate the actions called for in paragraph 3.

5.3 An annual US/Portugal statement consolidating the current balance of defense equipment acquisition and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed.

5.4 Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reservation concerning US reimbursement) will apply

unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with national laws and regulations of each country.

5.5 This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX II

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT, DATED 28 MARCH 1979.

PRINCIPLES GOVERNING LOGISTIC SUPPORT OF COMMON EQUIPMENT

In implementing Article 1, paragraph 14 of the MoU, the two Governments shall be governed by the following:

1. When developing or procuring defense equipment, both Governments will agree upon the basis for joint follow-on logistic support in areas such as configuration control; interchangeability of assemblies, components and spare parts; maintenance; conversion; storage, spare parts provisioning; etc.

2. Arrangements and procedures for logistic support, paragraph 9, Article 1 of the MoU normally shall apply.

4. Both Governments will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MoU.

5. This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX III

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

TERMS OF REFERENCE

1. The Portugal/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, sub 2 and 3 of the MoU, respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring implementation of the MoU governing the mutual cooperation in research and development, production, acquisition and logistic support of conventional defense equipment. To this end the Committee members will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

2.1 They will discuss research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields.

2.2 They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

2.3 They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from

it, such conclusions to include any long term trends which may be established.

2.4 They will consider any other matters relevant to the MoU.

2.5 They will report after each meeting and advise as appropriate.

2.6 The Committee will alternately meet in the United States and in Portugal. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares Cardoso Cunha
Date 7 July 1980	12 December 1979

6-1406.8 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF BELGIUM AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of Belgium duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of their respective resources allocated to defense,
- Promote the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU),

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Mindful of the objectives described in Art. 3 of the North Atlantic Treaty and para. 4 of the final communique of the North Atlantic Summit Council of May 1977 with regard to Alliance cooperation in view of safeguarding Western security,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. The two Governments further agree that this MOU should be viewed in the larger context of the cooperation within the Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The parties hereto also agree that in the event of a possible conflict between this MOU and other agreements, they will consult with a view to amending this MOU.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. a. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national policies.

b. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense services and equipment to include components, subsystems, spare parts and major systems at all technological levels.

c. A long term equitable balance will not imply an equal monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

d. In order to assess the mutual flow of defense articles and services, the two Governments will jointly determine the counting procedures to be set down in an annex to this MOU that will apply to all defense articles and defense services purchased by them directly or through their respective industries under this MOU.

2. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to optimize standardization and/or interoperability within the Alliance. They will do likewise with regard to offers of services.

3. In the interests of standardization and the effective utilization of scarce resources, the two Governments will, to the extent possible, select qualified defense articles and defense services that have been developed or produced in the other country to meet their requirements, in accordance with the procedures of paragraph 7 below. Defense articles or defense services are those articles or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Belgian Ministry of Defense.

4. Each Government will from time to time notify the other Government of defense articles and services that may only be acquired by the notifying Government from domestic sources, as well as those defense articles and services that may be particularly suitable for acquisition by the other Government. Indicative lists of the latter will be provided in an annex to this MOU.

5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

6. Competitive contracting procedures will normally be used in acquiring defense articles developed or produced in or defense services provided by each country for use by the other country's defense establishment.

7. The detailed implementing procedures to be agreed will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals of defense articles produced in or defense services provided by each country will be evaluated without applying price differentials under buy-national laws and regulations, and without applying the cost of applicable import duties. In the event that either

party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

b. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

d. Provisions for duty-free certificates and related documentation;

e. Arrangements concerning quality control and audits of incurred costs and price proposals.

8. Both Governments will review defense articles and defense services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

9. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on or performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

10. a. Transfers to third parties of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

b. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and defense policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Third country transfers approved in accordance with this agreement will count in the calculation of the balance of exchanges as a purchase by the Government authorizing the transfer.

c. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the exent to which a proposed transfer may damage or infringe upon known licensing arrangements whereby commercial firms in the US or Belgium have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third country.

11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two Governments will mutually make available to each other, to the extent possible and in a timely fashion, all information and the proprietary rights required to implement cooperation under this MOU. The two Governments will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements and on fair and reasonable terms, between the industries of the two countries.

12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment covered by this MOU. Both Governments will make their defense logistic system and resources available for this purpose if required and mutually agreed.

ARTICLE II

Implementation Procedures

1. Mutually agreed implementing procedures for this MOU will be established and be a part thereof.

2. Representatives of the two Governments will be appointed as the responsible authorities for the implementation of this MOU. The Under Secretary of Defense for Research and Engineering will be the representative for the United States Government. The National Armaments Director will be the representative for the Government of Belgium.

3. The establishment of a Belgian-United States Committee for Mutual Cooperation and its rules of procedure and competence will be agreed upon in an annex to be made a part of this MOU.

4. Each Government will designate points of contact at the Ministry of Defense level and in the procurement offices under the Ministry of Defense. They will be listed in an annex to be made a part of this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of its respective industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that their industries comply with the regulation pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve maximum industrial participation. Accordingly, the Governments will arrange that their respective acquisition and requirements offices be made familiar with the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas covered by this MOU shall rest with the industries in each country.

ARTICLE IV

Security

The General Security of Information Agreement, dated 9 August 1960 and the Agreement for Security Procedures for Industrial Operations, dated 24 July 1979, between the two Governments, apply to activities under this Memorandum of Understanding.

ARTICLE V

Annual Statement

An annual United States - Belgium statement of the current balance and long-term trends of R&D cooperation, procurement, maintenance and logistic support of defense equipment between the two nations will be prepared on a basis to be mutually agreed in an annex to this MOU and reviewed during the meetings of the Belgian - United States Committee for Mutual Cooperation, in accordance with its terms of reference.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate government authorities will be incorporated into this MOU and become an integral part thereof as of the date of the last signature.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period. Unless the Governments mutually decide otherwise, the duration will be extended for successive five-year periods.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

3. Although the MOU may be terminated by the parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

1. The agreements in this MOU represent the understanding reached between the Government of the United States of America and the Government of the Kingdom of Belgium upon the matters referred to herein. Each Government may propose amendments; both Governments must agree in writing to any amendment of this MOU.

2. Any difference of opinion over the interpretation and implementation of this MOU and its annexes will be resolved by consultation between the two Governments.

3. This MOU, in three original texts in the English, French and Dutch languages, all three texts being equally authentic, will come into effect on the date of the last signature.

For the Government of the United States of America
The Secretary of Defense

Harold Brown

Date 12 December 1979

For the Government of the Kingdom of Belgium
The Minister of Defense

Jose Desmarets

12 December 1979

6-1406.9 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Kingdom of Denmark duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,
- Ensure the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the vent of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified and cost-effective defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Danish Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Danish-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Armaments Director in the Ministry of Defense will be the responsible authority of the Kingdom of Denmark for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classifed by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure

equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information that the information relates to the Memorandum of Understanding and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Danish-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement and logistics support needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Denmark statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU and made an integral part thereof.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take

such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America The Secretary of Defense	The Kingdom of Denmark The Minister of Defense
Harold Brown	Poul Søgaard
Date 30 January 1980	Date 2 January 1980

6-1407 Reserved.

Part 15 - Purchases From Defense Cooperation Country Sources

6-1500 Scope of Part. This Part implements the defense cooperation agreements made by the United States pursuant to other than Foreign Military Sales agreements.

6-1501 Policy. In order to increase their respective defense capabilities through more efficient cooperation in the research and development, production, and acquisition of defense equipment, the United States and the Government of Israel have entered into a defense cooperation requirement (see 6-001). The purpose of this agreement is to promote the most cost-effective and rational use of defense appropriations of the United States and the defense cooperation country. Accordingly, it is Department of Defense policy to achieve the best possible coordination of the materiel programs between such countries and the United States and to ensure that sources in defense cooperation countries are provided the opportunity to compete on a fair and equal basis with U.S. sources for selected research and development, production and service contracts subject to the restrictions of 6-1402(b). Accomplishment of this policy requires the exemption of certain Buy National laws and foreign acquisition restrictions with respect to selected defense equipment purchased from defense cooperation country sources. For the purposes of solicitation and evaluation of such selected defense equipment, offers of Defense Cooperation country end products shall be treated as if they were participating country end products.

6-1502 Procedures for Purchases from Defense Cooperation Country Sources.

6-1502.1 Solicitation Procedures. Defense cooperation country sources shall be solicited as if they were sources from participating countries. The procedures set forth at 6-1403.1(a) shall apply.

6-1502.2 Submission of Offers. Defense cooperation country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations. The Buy American Act and the Balance of Payments Program restrictions are waived only for items listed in appropriate annexes to the agreements with the defense cooperation country. (See 6-1504.) However, the absence of an item from the defense equipment list is without prejudice to the authority of the Secretary to determine in any individual case that application of the restrictions of the Buy American Act and Balance of Payments Program restrictions to that item would be inconsistent with the public interest. Copies of these lists may be obtained from the Director for International Acquisition, OUSDRE(AP).

6-1502.3 Evaluation Procedures. Defense cooperation country offers shall be evaluated as if they were participating country offers. The procedures set forth at 6-1403.1(c)(2) shall apply.

6-1502.4 Other Procedures. Contracting procedures, industrial security procedures and contract administration procedures for defense cooperation country sources shall be conducted as if they were sources from participating countries. The procedures and policies set forth at 6-1403.3, 6-1404, 6-1405, and throughout this Regulation shall apply.

6-1503 Reserved.

6-1504 Defense Cooperation Country Agreements, Memoranda of Understanding and Accompanying Annexes. The following agreements, memoranda of understanding and annexes are provided for information purposes only. Determination and Findings have been executed by the Secretary of Defense waiving the application of the Buy American Act for items listed in the appropriate annexes in order to implement the agreements listed in this Part.

6-1504.1 MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF ISRAEL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN RESEARCH AND DEVELOPMENT, SCIENTIST AND ENGINEER EXCHANGE, AND PROCUREMENT AND LOGISTIC SUPPORT OF SELECTED DEFENSE EQUIPMENT.

The following Agreement is provided for information purposes only.

PREAMBLE

The Government of the United States of America and the Government of Israel, hereinafter referred to as the Governments:

Noting previous agreements on Data Exchange (signed on 22 December 1970) and the Production in Israel of U.S. Designed Defense Equipment (signed on 1 November 1971) and

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, in order to:

- Promote the cost-effective and rational use of funds allocated to defense to the extent permitted by their national laws and policies, and

- Mutually benefit from selected research and development programs which satisfy each nation's defense needs in a cost effective manner, and

Noting that Israel will continue to purchase large quantities of defense equipment from the United States and desiring to ameliorate the ensuing imbalance in defense trade between the two countries by affording Israeli sources improved opportunities to compete for agreed upon procurements of the U.S. Department of Defense (DoD)

have entered into this Memorandum of Agreement in order to achieve the above aims.

This Memorandum of Agreement (MOA) sets out the guiding principles governing mutual cooperations in conventional defense equipment research

and development, and procurement and logistic support of agreed upon defense supplies and services.

ARTICLE I

PRINCIPLES GOVERNING RECIPROCAL DEFENSE COOPERATION

1. The Governments intend to facilitate the accomplishment of the above-stated aims through cooperation in the research and development areas, and data exchange and scientist-engineer exchange programs, all as listed in Annex A hereto; and by affording each other's national sources improved opportunities to offer products and services identified in Annex B hereto. Items may be added to these annexes by agreement of the Governments. Items may be dropped from these annexes by either Government as its national policies require.

2. Both Governments, in the cases of purchases directly in support of the programs listed in Annex "A" and in the case of the items and services listed in Annex "B", will accord the following treatment to offers of services to be performed or supplies to be produced, in the other country:

a. These offers will be evaluated without applying price differentials resulting from Buy National laws and regulations.

b. To the extent permitted by law and regulation, these offers will be evaluated without consideration of the cost of duties and provisions will be made for duty-free certificates and related documentation.

c. Full consideration will be given to all qualified industrial and/or governmental sources of the other country for items or services listed in Annexes A and B consistent with the policies and criteria of the cognizant purchasing agencies, it being understood that such offers will be required to satisfy requirements of the purchasing organizations for performance, quality, delivery and costs.

d. The requirements of each Government's laws and regulations relating to purchases of property and services (including the requirements for obtaining competition for such purchases) shall be applicable to the implementation of this agreement.

3. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of improved defense cooperations. Each Government will also be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Agreement, together with appropriate implementing guidance.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36449

4. Technical information, including Technical Data Packages (TDPs), furnished to the other Government or to persons in the other country for the purpose of offering or bidding on, or performing a defense contract shall not be used for any other purpose without the prior agreement of the originating Government as well as the prior agreement of those owning or controlling proprietary rights in such technical information. Each Government will ensure that full protection will be given by its officers, agents, and contractors to such proprietary, or to any privileged, protected or classified data and information they contain. Each Government will also undertake its best efforts to ensure compliance with the foregoing provisions on the part of other persons in its country. In no event shall such technical information or TDPs or products derived therefrom be transferred to any third country or any other third part transferee without the prior written consent of the originating Government.

5. Both Governments will undertake their best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries, when the items in Annexes A and B require such efforts. Both Governments will also facilitate the necessary export licenses required for the submission of bids or proposals or otherwise required for the performance of Annexes A and B.

6. The transfer to third countries of material or technical information and of articles derived therefrom generated from the mutual cooperative programs included in this MOA is subject to case-by-case advance agreement of the originating Government.

7. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

IMPLEMENTING PROCEDURES

A joint U.S. DoD-Israel MOD committee shall be established to prepare and update the annexes and attachment hereto for approval by the appropriate authorities of each Government and to periodically review the progress of implementation. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logisitics, and other appropriate Department of Defense and State officials, will be responsible in the U.S. Government for the implementation of this MOA. The Director, General, Israel Ministry of Defense will be the responsible counterpart authority for the Government of Israel. Other duties to be

assigned this committee and the frequency of their meetings shall be further defined in Attachment 1.

ARTICLE III

SECURITY

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this MOA are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

2. The operating procedures for the implementation of the General Security Information Agreement, dated 25 March 1963, between the Governments apply to activities under this Memorandum of Agreement.

ARTICLE IV

DURATION

1. This MOA will remain in effect for a five-year period following its signing and will be extended for successive five-year periods, if at the end of each five-year interval the Governments mutually agree to such an extension.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOA before the end of the five-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOA may be terminated by the Parties, any contract entered into consistent with the terms of this MOA shall continue in effect, unless the contract is terminated in accordance with its own terms. Moreover, Article I, Sections 4 and 6 and Article III of this MOA will continue in full force and effect after, and notwithstanding, the expiration or termination of this MOA.

For the Government of Israel The Minister of Defense	For the United States Government The Secretary of Defense
E. Weizman	Harold Brown
Date 19 March 1979	Date 19 March 1979

ANNEX A

LISTING OF COOPERATIVE R&D EFFORTS

I. Development Data Exchange Program. General revitalization of existing annexes to improve exchange of development data with specific emphasis in the following areas:

(To be jointly determined by both Governments)

II. Complementary/Competitive Development Programs

(To be jointly determined by both Governments. "Competitive Development Programs" refers to programs to be conducted in one of the countries addressing defense equipment needs that the subject of development work in the other country with the objective of affording an alternate means for satisfying such needs.)

III. Scientist-Engineer Exchange Program

(To be jointly determined by both Governments)

ANNEX B

Listing of non R&D items of equipment and services covered by this MOA.

(To be jointly determined by both Governments)

ATTACHMENT 1

Membership, terms of reference for the joint U.S. DoD Israel MOD Committee, designated points of contact, and arrangements concerning implementation of the MOA.

7-103.14 *Discounts.*

DISCOUNTS (1968 JUN)

In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check

(End of clause)

When SF 33A is used, the above clause will be substituted for subparagraph (b) of clause 9, *Discounts* (see 16-101.1(ii)).

7-103.15 *Certain Communist Areas.* In accordance with 6-403, insert the following clause.

CERTAIN COMMUNIST AREAS (1980 FEB)

(a) Unless he first obtains the written approval of the Contracting Officer, the Contractor shall not acquire for use in the performance of this contract

(i) any supplies or services originating from sources within the communist areas of North Korea, Vietnam, or Cuba,

(ii) any supplies, however processed, which are or were located in or transported from or through North Korea, Vietnam, or Cuba.

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder

(End of clause)

7-103.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation*

(a) In accordance with 12-301 and 12-302, insert the following clause.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (1971 NOV)

This contract to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight (8) hours in any calen-

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36451

dar day or in excess of forty (40) hours in such workweek, whichever is the greater number of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight (8) hours or in excess of his standard workweek of forty (40) hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years from the completion of the contract.

(End of clause)

(b) The following clause shall be used, in addition to the clause in (a) above, when firefighters or fireguards are to be used.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION — FIREFIGHTERS AND FIREGUARDS (1974 APR)

A workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards under the following conditions:

(i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of eight (8) hours per day in a standby or on-call status; and

(ii) If the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and

(iii) *provided* that in determining the daily and weekly overtime requirements of the Act in any particular worksheet of any such employee whose established worksheet begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of eight (8) hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked.

(End of clause)

7-103.17 *Walsh-Healey Public Contracts Act.*

WALSH-HEALEY PUBLIC CONTRACTS ACT (1958 JAN)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

(End of clause)

WORKMEN'S COMPENSATION AND WAR HAZARD INSURANCE OVERSEAS (1968 JUL)

(a) This clause applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to Workmen's Compensation Insurance under the Defense Base Act (42 U.S.C. 1651). On behalf of such waived employees, the Contractor, before commencing performance under this contract shall provide, and thereafter maintain, at least such Workmen's Compensation Insurance or the equivalent as may be required by the laws of the country of which such waived employees are nationals. The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act would be applicable but for the waiver, a clause similar to this paragraph (a), including this sentence, imposing on all such subcontractors a like requirement to provide such Workmen's Compensation Insurance coverage.

(b) This paragraph applies if the Contractor or any of his subcontractors employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq). On behalf of such waived employees the Contractor shall subject to reimbursement as elsewhere herein provided, afford protection the same as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., with respect to the definition of war hazard risks (injury, death, capture or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by Workmen's Compensation Insurance or equivalent. Unless the Contractor elects to directly assume the liability to subcontractor employees created by this clause, the Contractor further agrees to insert in all subcontracts hereunder to which the War Hazards Compensation Act would be applicable but for the waiver, a clause similar to this paragraph (b), including this sentence, imposing on all such subcontractors a like requirement to provide War Hazard benefits.

(End of clause)

(c) When the clause in (b) above is required, the following clause shall also be inserted in the contract, but only if the Head of a Procuring Activity or his designee has decided that the contractor shall not purchase insurance against the liability described in 10-403(d)(2) (see also 10-502(c)).

REIMBURSEMENT FOR WAR HAZARD LOSSES (1968 JUL)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workmen's Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

(i) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(ii) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by Contracting Officer, the Contractor shall, convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

[End of clause]

7-104.3 *Buy American Act and the Balance of Payments Program.* The following clause shall be inserted in all contracts not utilizing small purchase procedures for supplies and in contracts for services which require the furnishing of supplies (e.g., the leasing of equipment), in accordance with 6-103.4, 6-103.7, and 6-803.2(a)(i) - (xi).

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (1980 OCT)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies which are directly incorporated into end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (6-104.4).

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/offset arrangement country, or

(B) an end product manufactured in an FMS/offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/offset arrangement country end product, see the procedures at 6-1310.3(b)(1).

(ix) "Defense Cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(b) The contractor agrees that there will be delivered under this contract only domestic end products *unless*, in its offer, it specified delivery of foreign end products in the clause entitled Buy American Act and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the contractor to supply a qualifying country end product or, at the contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the contractor to supply a product without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with the policies and procedures of Section VI.

(End of clause)

sated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the .....,* shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

*In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Supply Agency Regulation 8210.1, dated 9 October 1971, subject, Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

7-104.11 *Excess Profit.*

(a) Pursuant to 10 U.S.C. 2382 and 7300 and except as provided in (b) and (c) below, any contract in an amount which exceeds or may exceed $10,000, known to be for the construction or manufacture of all or part of any complete aircraft or naval vessel, shall contain the following clause, except that the words "if this contract is in an amount which exceeds $10,000" may be inserted at the beginning of the clause in formally advertised contracts:

EXCESS PROFIT (1957 JUN)

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U.S.C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections; *provided* however, that this clause shall not be construed to enlarge or extend by contract the obligations imposed by those sections. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

(End of clause)

(b) In any contract where only certain items or lots totaling more than $10,000 are subject to 10 U.S.C. 2382 or 7300, the foregoing clause should be modified to make the agreement of the contractor applicable only to such items or lots. In any contract where only certain items or lots totaling $10,000 or less would otherwise be subject to 10 U.S.C. 2382 or 7300, the foregoing clause should not be included in the contract even though the total amount of the entire contract exceeds $10,000.

(c) In any contract, otherwise subject to 10 U.S.C. 2382 or 7300, for scientific equipment used for communication, target detection, navigation or fire control, as designated by the Secretary, the clause prescribed in (a) above shall not be included, and the following clause shall be inserted in lieu thereof:

EXCESS PROFIT (1957 JUN)

The Secretary having designated the supplies called for by this contract to be scientific equipment used for communication, target detection, navigation, or fire control, the provisions of 10 U.S.C. 2382 and 7300 are not applicable to this contract.

(End of clause)

7-104.12 *Military Security Requirements.* Insert the following clause in all classified contracts (see 1-201.34). If the situation warrants because of the nature of the item, or the location or the conditions under which the contract is to be performed, such contract shall include a separate provision for such additional security safeguards as may be required (see paragraphs 1-103, 1-108, 1-115, and 1-116, ISR). When the Military Security Requirements clause is inserted in any contract, the contracting officer or his authorized representative shall approve and transmit a Contract Security Classification Specification (DD Form 254 and, if applicable, 254c) in accordance with 16-811 and Section VII, DoD 5220.22-R. The DD Form 254 is required in connection with all classified subcontracts unless excepted by DoD 5220.22-R.

MILITARY SECURITY REQUIREMENTS (1971 APR)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential," "Secret" or "Top Secret."

(b) The Contractor shall comply with (i) the Security Agreement (DD Form 441), including the attached Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M); and (ii) any revisions thereto, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government as provided in this clause and the security costs or time required for delivery under this contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provision of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(d) The Contractor agrees to insert in all subcontracts hereunder which involve access to classified information provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause.

(End of clause)

7-104.13 *Preference for Certain Domestic Commodities.* The following clause shall be included in all contracts for the acquisition of food, clothing and textiles as identified.

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (1980 OCT)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico; *Provided,* That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see Section VI).

(End of clause)

7-104.14 *Utilization of Small Business and Small Disadvantaged Business Concerns.*

(a) In accordance with 1-707.3(a), insert the following clause.

issued in accordance with this clause. Such notice shall be furnished to the CAO immediately upon notification from the Contracting Officer that duty-free entry will be accorded the supplier. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(c) This clause shall not apply to purchases of foreign supplies in connection with this contract if (i) such foreign supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) segregation of such supplies to insure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor agrees to insert the substance of this clause in any first-tier subcontract hereunder in connection with which foreign supplies in excess of $10,000 may be imported by the subcontractor into the United States, its possessions, or Puerto Rico.

(End of clause)

7-104.32 *Duty-Free Entry of Qualifying Country Supplies.* The following clause shall be inserted in accordance with 6-104.5 and 6-603.3(c).

DUTY-FREE ENTRY—QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (1980 OCT)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(i) all end items which constitute "qualifying country end products" (as defined in 6-001) to be delivered under this contract; and

(ii) all supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided,* That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of his subcontract.

(b) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to non-governmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(d) All shipping documents submitted to customs, covering qualifying country end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

(i) Government prime contract number;

(ii) identification of carrier;

(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate part of entry, District Director of Customs, kindly release the shipments under 8.59CP and notify Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, New York 10013, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate";

(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of qualifying country supplies that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government under the contract. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the qualifying country supplier. The notice shall identify (i) the qualifying country, (ii) the contract number, and (iii) the scheduled delivery date(s).

(g) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (i) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business; and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(End of clause)

7-104.33 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause:

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-104.34 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the following clause.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

ADVANCE PAYMENT (1976 OCT)

(1) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (14)(d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (14)(a) below; and (iii) without a properly certified invoice or invoices.

(2) *Special Bank Account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14)(b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided,

(g) Prior to approval of the first article, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity shall be at the sole risk of the Contractor; and costs incurred on account thereof shall not be allocable to this contract (i) for the purpose of progress payments prior to approval of the first article, if this contract contains the clause entitled "Progress Payments," or (ii) for the purpose of termination settlements, if this contract is terminated for the convenience of the Government prior to approval of the first article.

(End of clause)

At the option of the contracting officer, the following paragraph may be added to the clause:

(h) The first article offered must be manufactured at the facilities in which that item is to be produced under the contract, or if the first article is a component not manufactured by the Contractor, such component must be manufactured at the facilities in which the component is to be produced for the contract. A certification by the Contractor to this effect must accompany each first article which is offered. (1974 APR)

(b) In accordance with 1–1903, insert the following clause when the Government is responsible for conducting first article approval test:

FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (1969 SEP)

(a) The first article is ..... unit(s) of Lot/Item ..... and shall, within .....(—) calendar days from the date of this contract, be delivered to the Government at ..... (*set forth consignee and address*) for first article approval tests. The documentation accompanying the first article shall contain this contract number and the Lot/Item identification. The performance or other characteristics which the first article must meet, and the tests to which it will be subjected, are contained or referenced in this contract.

(b) The Contracting Officer shall, by written notice to the Contractor within .....(—) calendar days after receipt of the first article by the Government, approve, conditionally approve, or disapprove the first article. The notice of approval or conditional approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons therefor.

(c) If the first article is disapproved by the Government, the Contractor may be required, at the option of the Government, to submit an additional first article for first article approval test. After each notification by the Government to submit an additional first article, the Contractor shall at no additional cost to the Government make any necessary changes, modifications, or repairs to the first article, or select another first article for testing. Such additional first article shall be furnished to the Government under the terms and conditions and within the time specified in the notification. The Government shall take action on this first article within the time limit specified in (b) above. The costs of additional first article approval tests and all costs related to such tests shall be borne by the Contractor. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional first article approval tests.

(d) If the Contractor fails to deliver any first article for test within the time or times specified, or if the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract, and this contract shall be subject to termination for default; *provided*, that failure of the Government in such an event to terminate this contract for default shall not relieve the Contractor of his responsibility to meet the delivery schedule for production quantities.

(e) Where the first article is not consumed or destroyed in testing, and unless otherwise provided in this contract, the Contractor (i) may deliver an approved first article as a part of the contract quantity if it meets all terms and conditions of this contract for acceptance, and (ii) shall be

responsible for removal and disposition of any first article from the Government test site at his expense.

(f) In the event the Contracting Officer does not approve, conditionally approve, or disapprove the first article within the time specified in (b) or (c) above, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates, or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided in the "Changes" clause. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(g) The Contractor shall be responsible for spare parts support and repair of the first article during any first article approval test.

(h) Prior to approval of the first article, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity shall be at the sole risk of the Contractor, and costs incurred on account thereof shall not be allocable to this contract (i) for the purpose of progress payments prior to approval of the first article, if this contract contains the clause entitled "Progress Payments," or (ii) for the purpose of termination settlements, if this contract is terminated for the convenience of the Government prior to approval of the first article.

(End of clause)

At the option of the contracting officer, the following paragraph may be added to the clause:

(i) The first article offered must be manufactured at the facilities in which that item is to be produced under the contract, or if the first article is a component not manufactured by the Contractor, such component must be manufactured at the facilities in which the component is to be produced for the contract. A certification by the Contractor to this effect must accompany each first article which is offered.(1974 APR)

(c) In accordance with 1–1902(c), the following paragraph may be substituted for paragraph (g) of the clause in (a) above or paragraph (h) of the clause in (b) above.

(g) or (h) Prior to approval of the first article(s), the Contractor may, upon written authorization by the Contracting Officer, acquire specific materials or components or commence production to the extent essential to meet production quantity delivery requirements. Until first article approval is granted, only costs for the first article and costs incurred in accordance with such authorization shall be allocable to this contract (i) for the purpose of progress payments if this contract contains a clause entitled "Progress Payments," or (ii) for the purpose of termination settlements, if this contract is terminated for the convenience of the Government. In the event first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes in, or replace all items manufactured under this contract, at no change in contract price. (1974 APR)

7–104.56 *Reserved.*

7–104.57 *Reserved.*

7–104.58 *Identification of Expenditures in the United States.*

(a) In accordance with 6–804, insert the following clause.

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (1966 OCT)

(a) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment which represents estimated expenditures in the

(e) When the delivery schedule is in terms of specific calendar dates ((d)(1) or (d)(3) above), invitations for bids shall include one of the following paragraphs in lieu of (b) of the clauses in (b) and (c) above:

(1)(b) The foregoing delivery requirements are based on the assumption that the Government will make award by (*purchasing activity, insert calendar date*). Each delivery date in the delivery schedule set forth herein will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to paragraph 10(d) of the Solicitation Instructions and Conditions, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Therefore, in computing the available time for performance, the bidder should take into consideration the time required for notice of award to arrive through the ordinary mails. (1974 APR)

(2)(b) The foregoing delivery requirements are based on the assumption that the successful bidder will receive the notice of award by (*purchasing activity, insert calendar date*). The Government will extend each delivery date in the delivery schedule set forth herein by the number of calendar days after the above date that the Contractor receives notice of award; *provided*, that the Contractor promptly acknowledges such receipt. (1974 APR)

(f) When the delivery schedule is based on the date of receipt of a written notice of award ((d)(ii) above), paragraph (b) of the clauses in (b) and (c) above shall be deleted.

7-104.93 *Preference for Domestic Specialty Metals.*

(a) The following clause shall be included in all contracts over $10,000 that call for the delivery to the Government of an article containing specialty metals within the following six major classes of programs: aircraft, missile and space systems, ships, tank-automotive, weapons and ammunition.

PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAJOR PROGRAMS) (1980 OCT)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

(c) The Contractor agrees to include this clause, including this paragraph (c), in every subcontract or purchase order issued hereunder unless he knows that the item being purchased contains no specialty metals.

(End of clause)

(b) The following clause shall be included in all contracts over $10,000, other than those covered by the clause in paragraph (a), calling for the delivery of an article that contains specialty metals.

PREFERENCE FOR DOMESTIC SPECIALTY METALS (1980 OCT)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) furnished by it or purchased by it for direct incorporation in any article delivered to the Government under this contract shall have been melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purpose of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

(End of clause)

7-104.94 *Capture and Detention.* In accordance with 10-406, insert the following clause.

CAPTURE AND DETENTION (1968 JUN)

(a) As used in this clause:

(1) "captured person" means any employee of the Contractor—

(i) who is assigned to duty outside the United States for the performance of this contract, and

(ii) who is found to be missing from his place of employment under circumstances that make it appear probable that his absence is due to the action of the force of any power not allied with the United States in a common military effort, or who is known to have been taken prisoner, hostage or otherwise detained by the force of any such power, whether or not such person is actually engaged in his employment at the time of capture; provided that at the time the person was captured and detained that the person was either:

(A) engaged in activity directly arising out of the course of his employment under this contract, or

(B) captured in an area in which the captured person was present only because such presence was required in order to perform this contract;

(2) a "period of detention" begins with the day of capture and continues until the captured person is returned to his place of employment, or to the United States, or is able to be returned to the jurisdiction of the United States, or until his death is in fact established or legally can be presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever shall occur first;

(3) "United States" comprises geographically the fifty states and the District of Columbia; and

(4) "War Risk Hazards Compensation Act" refers to the statute compiled in Chapter 12 of Title 42 U.S. Code (Sections 1701 - 1717), as amended.

(b) If pursuant to an agreement entered into prior to the capture, the Contractor is obligated to pay and shall have paid benefits to a captured person, or his dependents, on account of his detention, the Government will reimburse the Contractor for such payments up to an amount which

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(a) The Contractor hereby certifies, as of the date of this contract, to be in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR 705, Appendix, and Part 706).

(b) If it is later determined, after notice and opportunity to be heard, that the Contractor was willfully not in compliance with such standards as of the date of this contract, then this contract may be terminated in accordance with the provisions of the Termination for Default clause.

(c) Should the Government determine that termination for default would not be in the public interest, the Contractor agrees to accept an equitable reduction of the contract price or cost allowance and profit or fee, as appropriate under the circumstances.

(d) The Contractor shall require a Certification - Wage and Price Standards, limited to (a) above, as a condition of award of any first-tier subcontract which exceeds $5 million. The Contractor further agrees that should any price adjustment in subcontract prices result from the operation of this provision as to subcontracts, he will advise the Contracting Officer and an equitable adjustment of the contract price will be made. The operation of this provision in any subcontract shall not excuse the Contractor from performance of this contract in accordance with its terms and conditions. Any waiver or relaxation of the certification requirements with respect to such first-tier subcontractors can only be made by the Secretary.

(End of clause)

7-104.102 *Certification of Requests for Adjustment or Relief Exceeding $100,000.* In accordance with 1-342, insert the following clause.

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (1980 FEB)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

_____
(Official's Name)

_____
(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(i) requests for routine contract payments— for example, those for payment for accepted supplies and services, routine vouchers under cost reimbursement-type contracts, and progress payment invoices;

(ii) final adjustments under incentive provisions of contracts;

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

7-104.103 *Reserved.*
7-104.104 *Reserved.*

7-104.105 *Offset Arrangement.* When appropriate in accordance with 6-1310.3(d), insert a clause substantially as follows.

OFFSET ARRANGEMENT (1980 OCT)

(a) The Contractor is responsible under the contract for arranging with representatives of the Government of . . . . . .* under . . . . . .** dated . . . . . for participation by sources in . . . . . .* for a minimum of (*percentage or dollar value*) of the value of this prime contract. This offset requirement may be fulfilled either by subcontracts under this contract or through other business the Contractor may choose to place in . . . .* (Commercial business will not be considered for duty-free entry.) All contractual arrangements to be entered into in accordance with this clause must be submitted to the Contracting Officer for determination as to whether such arrangements fulfill the offset requirement. Special conditions relating to the offset requirement are as follows:

. . . . . .

. . . . . .

(b) The Contractor will provide the following information to the Contracting Officer within 30 calendar days after the completion of each calendar quarter during the term of the contract:

(i) subcontract or other solicitations offered to . . . . . .* industry (items, dollar value, date of solicitation, and identification of sources);

(ii) subcontract or orders placed with . . . . . .* sources—

(A) item
(B) value
(C) contracting office
(D) competitive or noncompetitive
(E) date of subcontract
(F) identification of subcontractor

(iii) status of deliveries under subcontracts placed with . . . . . .* sources.

(c) None of the provisions of this clause shall relieve the Contractor of the need to comply with the International Traffic in Arms Regulations, the Industrial Security Manual, or other laws and regulations governing foreign acquisition and disclosure of information to foreign nationals.

(d) The substance of this provision shall be placed in all subcontracts awarded to U.S. companies which appear to offer a significant opportunity for lower tier subcontracting with . . . . . .* sources under . . . . . .**

*Insert name of foreign country.
**Insert offset agreement number or other description.

(End of clause)

7-104.106 *Qualifying Country Sources as Subcontractors.* Insert the following clause in accordance with 6-104.5 and 6-803.1(e) whenever the Buy American Act and Balance of Payments Program clause at 7-104.3 is used in the solicitation or contract.

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (1980 OCT)

No qualifying country source (6-001), subject to the restrictions set forth in Section VI, Part 14, or U.S. source is to be precluded from competing for subcontracts.

(End of clause)

7-104.107 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the following clause.

LIMITATION ON SALES COMMISSIONS AND FEES FOR FOREIGN GOVERNMENTS (1980 OCT)

Unless the sales commission and fee have been identified and payment thereof has been approved in writing by the Government of . . . . . .* before contract award, the following provisions, as appropriate, shall apply.

(a) For firm fixed-price contracts or fixed-price contracts with economic price adjustment:

"The Contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of . . . .*"

*Name of foreign country.

(b) For all other types of contracts:

"Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of . . . . . .* shall be considered as an unallowable item of cost under this contract."

*Name of foreign country.

(End of clause)

7-105 Additional Clauses. The following clauses shall be inserted in fixed-price supply contracts in accordance with departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-105.1 *Alterations in Contract.*

(a)

ALTERATIONS IN CONTRACT (1949 JUL)

The following alterations have been made in the provisions of this contract.

(End of clause)

7-203.28 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-203.29 *Audit by Department of Defense.* Insert the clause in 7-104.41(a).

7-203.30 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the applicable clause therein.

7-203.31 *Subcontractor Cost and Pricing Data.* Insert the clause in 7-104.42(a).

7-203.32 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-203.33 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-203.34 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-203.35 *Notice of Intent to Disallow or Not Recognize Costs.* In accordance with 15-206, insert the following clause in all cost-reimbursement type and flexibly priced contracts.

NOTICE OF INTENT TO DISALLOW OR NOT RECOGNIZE COSTS (1978 AUG)

(a) Notwithstanding any other provision of this contract, the Contracting Officer may, at any time, issue to the Contractor a written notice of intent to disallow or not recognize costs. This notice will indicate the Contracting Officer's intent to take exception to specified costs being incurred, or planned for incurrence, which he has determined not to be allowable in accordance with the terms of this contract.

(b) The Contractor may, within sixty (60) days of receipt of such notification, submit a written response to the Contracting Officer, together with justification therefor, against the proposed cost exception.

(c) In the event the Contractor does not file any such written response within the sixty (60) day period in (b) above, the notice shall serve as the Contracting Officer's final decision under the provisions of the clause herein entitled "*Disputes*".

(d) The Contracting Officer shall, within sixty (60) days of receipt of any written response, either withdraw in writing the notification or issue a final decision thereon under the provisions of the clause herein entitled "*Disputes*".

(e) Failure to issue a notice pursuant to this clause shall not alter the Government's rights with respect to exception to incurred costs.

(End of clause)

7-204 Clauses To Be Used When Applicable.

7-204.1 *Clauses for Cost Reimbursement Type Supply Contracts Involving Construction Work.*

(a) In accordance with 12-106 and 18-703, insert the clauses in 7-602.23.

(b) In accordance with 7-602.20 and 7-602.24, insert the clauses therein in addition to the clause in 7-104.3.

7-204.2 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the schedule language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-204.3 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-204.4 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-204.5 *Patent Indemnity.* In accordance with 9-103, insert the clause with additional applicable provisions in 7-104.5.

7-204.6 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-204.7 *Patent Rights.* When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-204.8 *Reporting of Royalties.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-204.9 *Rights in Data.* In accordance with 7-104.9 insert the appropriate clause, or clauses, therein.

7-204.10 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-204.11 *Excess Profit.* In accordance with 7-104.11, insert the appropriate clause therein.

7-204.12 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, deleting paragraphs (c) and (d) and substituting the following:

> (c) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such changes cause an increase or decrease in the estimated cost or time required for performance of this contract, the estimated cost, fee, delivery schedule, or any other provision of the contract that may be affected, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause of this contract.
>
> (d) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause. (1971 APR)

7-204.13 *Preference for Certain Domestic Commodities.* In accordance with 6-305, insert the clause in 7-104.13.

7-204.14 *Gratuities.* Insert the clause in 7-104.16, except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense appropriation acts.

7-204.15 *Priorities, Allocations, and Allotments.* In accordance with the requirements of 1-307.2, insert the clause in 7-104.18.

7-204.16 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-204.17 *Employment of Ocean-Going Vessels—Ocean Transport of Government-Owned Supplies.*

(a) In accordance with 1-1404(a), insert the clause in 7-104.19(a).

(b) In accordance with 1-1404(b)(1), insert the clause in 7-104.19(b).

(c) In accordance with 1-1404(b)(2), insert the clause in 7-104.19(c).

(d) In accordance with 1-1410, insert the clause in 7-104.19(d).

> craft, or previously approved in writing by the .....* (*See footnote at end of clause.*) As to land based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.
>
> (iii) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.
>
> (c) If any aircraft is damaged, lost, or destroyed during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the estimated cost (exclusive of any fee) of this contract, whichever is less, and if the Contractor is not liable for the damage, loss or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (i) in the estimated cost, delivery schedule, or both, and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, his employees, or any subcontractor, which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.
>
> (End of clause)
>
> *In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Supply Agency Regulation 8210.1, dated 8 October 1971, subject, Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

In the foregoing clause, the definition of "*aircraft*" may be appropriately modified in the Schedule if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

7-204.22 *Duty-Free Entry.*

(a) *Duty-Free Entry for Designated Items.* In accordance with 6-603.3(a), insert the clause in 7-104.31(a).

(b) *Duty-Free Entry for Items Not Identified in the Contract.* In accordance with 6-603.3(b), insert the clause in 7-104.31(b).

7-204.23 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-204.24 *Taxes.*

(a) *Contractor Not a Foreign Government.* In accordance with 11-403.2(c), insert the following clause.

TAXES (1960 JUL)

Any tax or duty from which the United States Government is exempt by agreement with the Government of ....., or from which the Contractor or any subcontractor hereunder is exempt under the laws of ....., shall not constitute an allowable cost under this contract.

(End of clause)

(b) *Foreign Government as Contractor.* In accordance with 11-403.2(d), insert the following clause.

TAXES (1960 JUL)

Any tax or duty from which the United States Government is exempt by agreement with the Government of ..... or from which any subcontractor hereunder is exempt under the laws of ....., shall not constitute an allowable cost under this contract.

(End of clause)

7-204.25 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the appropriate clauses in 7-104.34.

7-204.26 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-204.27 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-204.28 *General Services Administration Supply Sources.* In accordance with 5-909, insert the following clause.

GENERAL SERVICES ADMINISTRATION SUPPLY SOURCES (1977 AUG)

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. All property acquired under such an authorization shall be subject to the provisions of the clause of this contract entitled "*Government Property*", except paragraphs (a) and (b) thereof.

(End of clause)

7-204.29 *Special Termination Costs.* In accordance with 8-712, insert the clause in 7-108.3.

7-204.30 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-204.31 *United States Products (Military Assistance Program).* In accordance with 6-703.4, insert the clause in 7-2003.51.

7-204.32 *Value Engineering.*

(a) *Use of the Incentive and Program Requirement Clauses.* In accordance with 1-1702 and 1-1707, insert the applicable clause or clauses in 7-104.44(a) and (b), as modified in (b) or (c) below.

(b) *Cost-Plus-Incentive-Fee Contracts.* Substitute the following "Sharing" provision for paragraph (c) of the applicable clause in 7-104.44(a) and (b):

(c) *Sharing.* If a VECP submitted by the Contractor pursuant to this clause is accepted, the Contractor shall share in the savings realized by the Government in accordance with the following provisions:

(1) Instant Contract

(i) Definitions:

7-204.55 *Cost/Schedule Control Systems.* In accordance with 1-331(h) and 3-501(b) Section C (xlv), insert the clause in 7-104.87.

7-204.56 *Engineering Change Proposals (ECP's).* In accordance with 26-205, insert the clause in 7-104.89.

7-204.57 *Change Order Accounting.* In accordance with 26-205, insert the clause in 7-104.90.

7-204.58 *Time of Delivery.* Insert a clause in accordance with 7-104 92

7-204.59 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-204.60 *Preference For United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-204.61 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-403.2(c), insert the following clause

SUBMISSION OF COMMERCIAL FREIGHT BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (1976 FEB)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the

General Services Administration — FZATR
Chester A. Arthur Building
Washington, D. C. 20406

(or to the ACO if specified) individual commercial freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of $500.00.

(End of clause)

7-204.62 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-204.63 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-204.64 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-204.65 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104 98.

7-204.66 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-204.67 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-204.68 *Offset Arrangement.* In accordance with 6-1310.3(d), insert the clause in 7-104.105.

7-204.69 *Qualifying Country Sources as Subcontractors.* In accordance with 6-1403.4, insert the clause at 7-104.106.

7-205 Additional Clauses. The following clauses shall be inserted in cost-reimbursement type supply contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-205.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-205.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-205.3 *Title and Risk of Loss.* Insert the clause in 7-103.6.

7-205.4 *Bill of Materials.* In accordance with 7-105.6, insert the clause therein.

7-205.5 *Reserved.*

7-205.6 *Stop Work Orders.* The clause in 7-105.3, if modified by changing (i) the words "the 'Termination for Convenience' clause of this contract" to "the 'Termination' clause of the contract" and (ii) the words "an equitable adjustment shall be made in the delivery schedule or contract price, or both" to "an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected," is authorized for use in any cost-reimbursement type contract under the criteria and in accordance with the instructions in 7-105.3.

7-205.7 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

*(7) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. (**This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted pursuant to 10-404(b)(2).*)

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) *Disposition of Government Property.* Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as provided for elsewhere in this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in paragraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the price or costs of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) *Removal of Government Property and Abandonment.* If the Contractor determines any Government property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as provided by paragraph (i) above, except that the Government may abandon any Government property in place and thereupon all obligations of the Government regarding such abandoned property shall cease. The Government has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment, disposition pursuant to paragraph (i) above, nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

(End of clause)

7-303.8 *Communist Areas.* In accordance with 6-403 and 7-103.15, insert the clause in 7-103.15.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

7-303.9 *Notice to the Government of Labor Disputes.* Insert the clause in 7-104.4 in all contracts involving the furnishing of production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Contracting Activity concerned determines to be appropriate for the use of such a clause.

7-303.10 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-303.11 *Special Termination Costs.* In accordance with 8-712, insert the clause in 7-108.3.

7-303.12 *Subcontracts.* In accordance with 23-201.1, insert the clause in 7-104.23.

7-303.13 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62.

7-303.14 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-303.15 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-303.16 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-303.17 *Ground and Flight Risk.* In accordance with 10-404, insert the clause in 7-104.10.

7-303.18 *Duty-Free Entry.* In accordance with 6-603.3, insert the clauses in 7-104.31.

7-303.19 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-303.20 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-303.21 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the clause in 7-104.34.

7-303.22 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-303.23 *Progress Payments.* In accordance with E-510, insert one of the clauses in 7-104.35.

7-303.24 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-303.25 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-303.26 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-303.27 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-303.28 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein.

Secretary and approved by the Contracting Officer, (or in contracts with the Department of the Navy, *The Department*) When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(End of clause)

7-303.63 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-303.64 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-303.65 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-303.66 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-303.67 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-303.68 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-303.69 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-303.70 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-304 Additional Clauses. The following clauses shall be inserted in fixed-price research and development contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

7-304.1 *Changes.*

CHANGES (1968 JUN)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of inspection, delivery, or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

n the foregoing clause, the period of "thirty (30) days" within which any claim or adjustment must be asserted, may be varied in accordance with Departmental rocedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any hange order that is expected to exceed $100,000, except where the price is ased on adequate price competition, established catalog or market prices of ommercial items sold in substantial quantities to the general public, or prices set y law or regulation, the contracting officer shall require the contractor to furnish Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure the ontract includes or is modified to include a defective pricing data clause (see -104.29).

7-304.2 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-304.3 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-304.4 *Bill of Materials.* In accordance with 7-105.6, the clause set forth nerein may be inserted.

7-304.5 *Notice of Shipments.* The clause in 7-105.4 may be inserted.

7-304.6 *Reports of Work.* In accordance with 7-404.6, the clause set forth nerein may be inserted.

7-304.7 *Liquidated Damages.* In accordance with 1-310, the clause in -105.5 may be inserted.

7-304.8 *Reserved.*

7-304.9 *Reserved.*

7-304.10 *Warranties.* In accordance with 1-324, an appropriate warranty nay be inserted.

7-304.11 *Stop Work Orders.* In accordance with 7-105.3, the clause set forth nerein may be inserted.

7-304.12 *Term of Performance or Delivery Date.* Insert a clause in accordance with 1-305.5. Clauses in 7-104.92 shall be used as a guide.

the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (1959 FEB)

If more than one clause or Schedule provision of this contract authorized the temporary withholding of amounts otherwise payable to the Contractor for work performed under this contract, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; *provided* that this limitation shall not apply to:

(i) withholdings pursuant to any clause relating to wages or hours of employees;
(ii) withholding not specifically provided for by this contract; and
(iii) the recovery of overpayments.

(End of clause)

(b) The clause in (a) above is not required when:

(i) the contracting officer or contracting activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or

(ii) all of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them are being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause set forth in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

7-403.13 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-403.14 *Changes to Make-or-Buy Program.* In accordance with Section III, Part 9, insert the clauses in 7-204.20.

7-403.15 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-403.16 *Flight Risks.* In accordance with 10-504, insert the clause in 7-204.21.

7-403.17 *Duty-Free Entry.* In accordance with Section VI, Part 6, insert the appropriate clause or clauses in 7-104.31.

7-403.18 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-403.19 *Taxes.* In accordance with 11-403, insert one of the clauses in 7-204.24.

7-403.20 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the clause in 7-104.34.

7-403.21 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) de-

pending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502 (b) and (c) according to the instructions stated in those paragraphs.

7-403.22 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-403.23 *General Services Administration Supply Sources.* In accordance with 5-909, insert the clause in 7-204.28.

7-403.24 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-403.25 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-403.26 *United States Products (Military Assistance Program).* In accordance with 6-703.4, insert the clause in 7-2003.51.

7-403.27 *Value Engineering.* Subject to the limitations in 1-1702, insert the appropriate clause(s) in 7-104.44, substituting the "Sharing" paragraph (e) in 7-204.32(b) or (c) for paragraph (e) of the clause in 7-104.44, as applicable.

7-403.28 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-403.29 *Non-Use of Foreign Flag Vessels Engaged in Cuban and North Vietnam Trade.* In accordance with 1-1404, insert the clause in 7-104.19 (d).

7-403.30 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-403.31 *Special Termination Costs.* In accordance with 8-712, insert the clause in 7-108.3.

7-403.32 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-403.33 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3(c)).

7-403.34 *First Article Approval.* In accordance with Section I, Part 19, insert the appropriate clause in 7-104.55.

7-403.35 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-403.36 *United States Products and Services (Balance of Payments Program).* In accordance with Section VI, Part 8, insert the clause in 7-2003.53.

7-403.37 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-403.38 *Reserved.*

7-403.39 *Care of Laboratory Animals.* In accordance with 7-303.44, insert the clause therein.

7-403.40 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein

7-403.41 *Material Inspection and Receiving Report* In accordance with 7-104.62, insert the clause therein

INDEMNIFICATION UNDER PUBLIC LAW 85-804 — COST-REIMBURSEMENT TYPE CONTRACTS (1974 APR)

(a) Pursuant to Public Law 85-804 (50 U.S.C. 1431 - 1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(i) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(ii) loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(iii) loss of, damage to, or loss of use of property of the Government but excluding loss of profit;

to the extent that such a claim, loss or damage (A) arises out of or results from a risk defined in this contract to be unusually hazardous or nuclear in nature and (B) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for:

(i) claims by the United States (other than those arising through subrogation) against the Contractor; or

(ii) losses affecting the property of such Contractor;

when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. For purposes of this clause, the term "*principal officials*" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of.

(A) all or substantially all of the Contractor's business, or

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) a separate and complete major industrial operation in connection with the performance of this contract.

The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specifically authorized by the Secretary and approved by the Contracting Officer (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction

(f) In addition to the Contractor's responsibilities under the "Insurance — Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action The cost of insurance (including self insurance), covering a risk defined in this contract as unusually hazardous or nuclear in nature shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) "Limitation of Cost" / "Limitation of Funds" clauses of this contract do not apply to the Government's obligations under this clause Such obligations shall be excepted from the release required under the "Allowable Cost" clause of this contract

(End of clause)

7-403.58 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104 95.

7-403.59 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-483 2(c), insert the clause in 7-204.61.

7-403.60 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-403.61 *Preference for Domestic Specialty Metals.* In accordance with 7-104 93, insert the applicable clause therein

7-403.62 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104 97

7-403.63 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323 2(b), insert the clause in 7-104.98.

7-403.64 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-403.65 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-403.66 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-404 Additional Clauses. The following clauses shall be inserted in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-404.1 *Changes.*

CHANGES (1967 APR)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following

(i) drawings, designs, or specifications,
(ii) method of shipment or packing, and
(iii) place of inspection, delivery, or acceptance

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made

(i) in the estimated cost or delivery schedule, or both,
(ii) in the amount of any fixed fee to be paid to the Contractor; and
(iii) in such other provisions of the contract as may be affected; contract shall be modified in writing accordingly

7-504.13 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-504.14 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-504.15 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-504.16 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-504.17 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-504.18 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-504.19 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-504.20 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-505 Additional Clause. The following clause shall be inserted in personal services contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-505.1 *Alterations in Contract.* In accordance with 7-105.1(a), insert the clause therein.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 6—Construction and Architect-Engineer Contracts

7-600 Scope of Part. This Part sets forth uniform contract clauses for use in connection with the procurement of construction (see 18-100) and of architect-engineer services for the production and delivery of designs, plans, drawings and specifications, or for supervision and inspection of construction, or both.

7-601 General. As used throughout this Part, the term "construction contract" means any contract (other than one entered into on Standard Form 19 or DD Form 1155 (*see 16-401.2, 16-402.2, and 18-302*), a letter contract, a notice of award, or a modification not effecting new procurement) which is for construction as defined in 18-101.1.

7-602 Required Clauses for Fixed-Price Construction Contracts. The following clauses shall be inserted in all fixed-price construction contracts, except as otherwise provided in this Part.

7-602.1 *Definitions.*

DEFINITIONS (1964 JUN)

(a) The term "Head of the Agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency, and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

(End of clause)

Additional definitions may be included *provided* they are not inconsistent with the foregoing clause or the provisions of this Regulation.

7-602.2 *Specifications and Drawings.*

SPECIFICATIONS AND DRAWINGS (1964 JUN)

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

(End of clause)

7-602.3 *Changes.*

CHANGES (1968 FEB)

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

DISPUTES CONCERNING LABOR STANDARDS (1977 DEC)

Disputes arising out of the labor standards provisions of this contract shall be subject to the *Disputes* clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of this contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

(End of clause)

(b) In the case of construction contracts with a State or political subdivision thereof, in accordance with 18-703.3, preface the clauses required by (a) above with the following provision.

The Contractor agrees to comply with the requirements of the Contract Work Hours Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36469

7-602.24 *Nondomestic Construction Material.* When a determination has been made that certain construction materials may be used without regard to country of origin, the following clause shall be included in the contract, and the excepted items shall be listed therein.

NONDOMESTIC CONSTRUCTION MATERIALS (1966 OCT)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to the items set forth below:
(Insert list here)

(End of clause)

When the above clause is used, the contracting officer shall place in the contract file a copy of the signed approval; and a copy thereof shall be available for public inspection.

7-602.25 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-602.26 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

(2) *Drawings and Other Data to Become Property of Government.*

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (1979 MAR)

All Designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

(b) In accordance with 18-910.2 and 18-910.3, insert the appropriate clause or clauses in 7-104.9.

7-603.43 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-603.44 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

(2) "*Safety precaution areas*" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined plane (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continues upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plane is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the landing areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white squares of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects, placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

* At some airfields the width of the primary surfaces is 1500 feet (750 feet on each side of the runway centerline). In such instances substitute the proper width in the clause

7-606.19 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-606.20 *Reserved.*

7-606.21 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-606.22 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-606.23 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94

7-606.24 *Value Engineering.* A VE Incentive or Program Requirement clause may be included in Cost-Reimbursement Type construction contracts at the discretion of the Contracting Officer. Use 7-602.50 or 7-104.44 (as modified by 7-204.32(b) or (c)) to suit the procurement.

7-606.25 *Patent Rights.* In accordance with 9-107 and 18-908, insert the appropriate clause in 7-302.23.

7-606.26 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-606.27 *Reporting of Royalties.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-606.28 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-606.29 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-606.30 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97

7-606.31 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323 2(b), insert the clause in 7-104.98.

7-606.32 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78

7-606.33 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

in the contract, or he may adjust such estimated construction contract price When bids or proposals are not solicited or where they are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate will be used in lieu of bids or proposals to determine compliance with the funding limitation

(End of clause)

(b) Whenever the clause set forth in (a) above is included in a contract, the following statement shall be inserted in the description of the work to be performed by the Architect-Engineer.

The estimated construction contract price for the project described herein is $.....

The figure to be inserted in this statement is to be established at the beginning of contract negotiations by agreement between the Architect-Engineer and the Government. Such estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the figure to be inserted, the Contracting Officer should make available to the Architect-Engineer the information upon which the Government has based its initial estimate and any subsequently acquired information which may affect the construction cost.

7-608.4 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-608.5 *Option for Supervision and Inspection Services.* The following clause may be included in any fixed-price architect-engineer contract if supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

OPTION FOR SUPERVISION AND INSPECTION SERVICES (1972 APR)

At any time prior to six (6) months after satisfactory completion and acceptance of the work to be furnished hereunder, the Government at its option, may direct, by a written order, the Architect-Engineer to perform any part or all of the supervision and inspection services provided under Appendix A. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

(End of clause)

7-608.6 *Requirements for Registration of Designers.* The following clause shall be inserted in fixed-price architect-engineer contracts, except that it may be omitted from any contract (1) when the design is to be performed outside the United States, its possessions, or Puerto Rico, or (2) when the design is to be performed in a State or possession which does not have registration requirements for the particular field involved:

REQUIREMENTS FOR REGISTRATION OF DESIGNERS (1972 APR)

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

(End of clause)

7-608.7 *Accident Prevention.* Insert the clause in 7-602.42, except in contracts where no field work is involved, substituting "Architect-Engineer" for "Contractor."

7-608.8 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.9 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29(a), insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.10 *Subcontractor Cost or Pricing Data.* In accordance with 7-104.42(a), insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.11 *Identification of Expenditures in the United States.* In accordance with Section VI, Part 8, insert the clause in 7-104.58, substituting "Architect-Engineer" for "Contractor."

7-608.12 *Authorization and Consent.* In accordance with 18-902.1 and 18-902.2, insert the appropriate clause in 7-103.22 or 7-302.21, substituting "Architect-Engineer" for "Contractor."

7-608.13 *Notice and Approval of Restricted Designs.* In accordance with 18-905, insert the following clause.

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (1972 APR)

In the performance of this contract, the Architect-Engineer shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer the Architect-Engineer shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Architect-Engineer to be available only from a sole source. As to any such design or specification the Architect-Engineer shall report to the Contracting Officer giving the reason or reasons why it is considered necessary to so restrict the design or specification

(End of clause)

7-608.14 *Patent Rights.* In accordance with 9-107 and 18-908(a), insert the appropriate clause in 7-302.23, substituting "Architect-Engineer" for "Contractor."

7-608.15 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6 in every classified contract which covers or is likely to cover classified subject matter, substituting "Architect-Engineer" for "Contractor."

7-608.16 *Alterations.* In accordance with 7-604.1, insert the clause therein.

7-608.17 *Rights in Data.* In accordance with 18-910.2 and 18-910.3, insert the appropriate clause, or clauses, in 7-104.9, substituting "Architect-Engineer" for "Contractor."

7-608.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83, substituting "Architect-Engineer" for "Contractor."

7-608.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-608.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-608.21 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-608.22 *Reserved.*

7-608.23 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

(iii) "Apprentices and Trainees," 7-602.23(a)(iii);
(iv) "Payrolls and Basic Records," 7-602.23(a)(iv);
(v) "Compliance With Copeland Regulations," 7-602.23(a)(v);
(vi) "Withholding of Funds" 7-602.23(a)(vi);
(vii) "Subcontracts", 7-602.23(a)(vii);
(viii) "Contract Termination - Debarment", 7-602.23(a)(viii); and
(ix) "Disputes Concerning Labor Standards", 7-602.23(a)(ix).

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates and the clauses referenced in paragraph (a) above shall be incorporated into the contract in their entirety by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination and clauses required in paragraph (b) above unless the Contracting Officer authorizes the start of work because of unusual or emergency situations.

(End of clause)

7-705.6 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-705.7 *Improvements to Buildings or Land Owned by the Government.* When necessary to assure that Government buildings or land will not be modified in a manner detrimental to the interests of the Government, the following clause shall be inserted.

IMPROVEMENTS TO BUILDING OR LAND OWNED BY THE GOVERNMENT (1954 SEP)

(a) The Contractor shall not construct or make, at its expense, any fixed improvement to, or structural alteration in the nature of, buildings or land owned or leased by the Government, without prior written approval of the Contracting Officer.

(b) For the purposes of paragraph (a), the terms "fixed improvement" and "structural alteration" mean any improvement to or alteration in the nature of the buildings or land which, after completion, cannot be removed without substantial loss of value or damage to the premises. Such terms do not include foundations for production equipment.

(End of clause)

7-705.8 *Patent Rights.* In accordance with 9-107, insert the appropriate clause as set forth in 7-302.23.

7-705.9 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-705.10 *Changes to Make-or-Buy Program.* In accordance with 3-902.4, insert the clause in 7-204.20(a).

7-705.11 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-705.12 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-705.13 *Advance Payments.* In accordance with Appendix E, Part 4, insert the clause in 7-104.34 but substitute paragraphs (3) and (5) from the clause in 7-204.25 for paragraph (3) and (5) of the clause in 7-104.34.

7-705.14 *General Services Administration Supply Sources.* In accordance with 7-204.28, insert the clause therein, deleting the last sentence.

7-705.15 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-705.16 *Duty-Free Entry.* In accordance with 6-603.2 and 6-603.3, insert either or both of the clauses in 7-104.31.

7-705.17 *United States Products and Services (Balance of Payments Program).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-705.18 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-705.19 *Reserved.*

7-705.20 *Insurance.* In accordance with 10-405 and 10-501, insert the clause in 7-104.65.

7-705.21 *Use of Excess and Near-Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-705.22 *Facilities Equipment Modernization.* Insert the following clause in any bilateral modification of an existing facilities contract, and in any new facilities contract, under which the Government provides modernized or replacement facilities.

FACILITIES EQUIPMENT MODERNIZATION (1976 JUL)

(a) In consideration of the Government providing, as set forth in this contract, for modernization or replacement of Government-owned equipment being used or to be used by the Contractor in the performance of Government firm-fixed-price contracts or subcontracts, or fixed-price contracts or subcontracts with economic price adjustment provisions, the Contractor agrees to return to the Government the net cost savings actually realized from the use of the modernized or replacement equipment on all such contracts or subcontracts entered into prior to the expiration of the three-year period following the date such equipment is placed in production, except (i) formally advertised contracts entered into subsequent to the date such equipment is placed in production, and (ii) contracts or subcontracts which specifically provide that they have been priced on the basis of anticipated use of such equipment.

(b)(1) The Contractor shall maintain adequate records for the implementation of this clause. The Contractor shall make such records available at its office for inspection, audit or reproduction by any authorized representative of the Contracting Officer. Within fourteen (14) months after the modernized or replacement equipment has been placed in production, the Contractor shall file with the Administrative Contracting Officer cognizant of the Government production and research property four (4) completed copies of DD Form 1651 (Industrial Equipment Modernization Program—Post Analysis Report).

(2) When the Contractor authorizes a subcontractor to use the modernized or replacement equipment, he shall require the subcontractor to maintain records, to make them and additional information available to the Contracting Officer, and to file four (4) copies of DD Form 1651, in the manner prescribed in (1) above.

(c) Records shall generally be acceptable if they are maintained for the equipment under established accounting practices and permit a fair estimation of the net cost savings realized. Net cost savings realized shall be determined by a comparison of the Contractor's cost experience in the operation of the equipment before and after modernization.

(d) Amounts due the Government under this clause shall be returned by the Contractor, as directed by the Administrative Contracting Officer by

DAC #76-25 31 OCTOBER 1980

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-902.35 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-902.36 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-902.37 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-902.38 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-902.39 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

7-902.40 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-902.41 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-902.42 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-902.43 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-902.44 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-902.45 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-902.46 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-902.47 *Limitations on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 10—Stevedoring Contracts

7-1000 Scope of Part. This Part sets forth uniform contract clauses for use in stevedoring contracts as defined in 22-401. These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7-1001 Technical Provisions. The following clauses or appropriate revisions in accordance with 22-404 shall normally be included in all stevedoring contracts.

7-1001.1 *Scope of Contract.*

SCOPE OF CONTRACT (1964 AUG)

(a) *General.* The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at ..... upon the terms and conditions hereinafter set forth for the term of this contract, beginning ..... and ending.....; *provided*, however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

(b) *Contractor's Duties.*

(1) *Loading.* In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area; also from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks, in the order directed by and in a manner satisfactory to the Contracting Officer.

(2) *Discharging.* In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area; also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

(3) *Handling Explosives.* In addition to (1) and (2) above, the following provisions are applicable to the loading and discharging of explosives:

(*a*) In loading explosives the Contractor shall perform all the stevedoring services necessary for the breaking-out and discharging from railroad cars, trucks and/or lighters alongside ship or from place of rest on pier, transporting to the vessel, and properly loading, stowing and normal securing and chocking in the vessel in a manner directed by applicable U.S. Coast Guard, Army, or Navy regulations.

(*b*) In discharging explosives the Contractor shall perform all stevedoring services necessary for discharging cargo from the vessel to place of rest on pier or the transporting to and loading into railroad cars, trucks and/or lighters. The Contractor shall also prepare and line the cars for handling the cargo (except the laying of new flooring) and shall brace, secure, cut bands, and lash the cargo in the cars in accordance with applicable regulations and shall place "explosive" placards on the cars prior to release, and shall close and seal all doors.

(*c*) The furnishing and preparation of gates, studs, new flooring, etc., for blocking railroad cars, as well as prefabrication of blocking in the vessel's hold, will be at the expense of the Government.

(*d*) The Contractor shall not be compensated for standby time when caused by slow-up or delay of one of his operations, which delay directly affects the other operations, such as delay in loading railroad cars, or in discharging from ship's hatches, unless such slow-up or delay was beyond the control and without the fault or negligence of the Contractor. This does not include the time required for shifting railroad cars. No standby time will be allowed unless previously approved by the Contracting Officer.

(c) *Area Requirements*. A clause similar to the following may be used when it is not known where the supplies or services will be required.

AREA REQUIREMENTS (1965 AUG)

Each item is divided into two (2) sub-items. Sub-item A is for delivery of the item to destinations East of the Mississippi River within the continental United States. Sub-item B is for delivery of the item to destinations West of the Mississippi River within the continental United States, excluding Alaska. With respect to each item, the Government shall order, except as hereinafter set forth, all the purchase requirements of .....(*activity*) which are for delivery to any destination East of the Mississippi River, from the Contractor awarded sub-item A, and shall order all of its purchase requirements for delivery to any destination West of the Mississippi River from the Contractor awarded sub-item B.

(End of clause)

7-1102.3 *Indefinite Quantity Contract.*

(a) *Delivery Order Limitations*. Insert the clause in 7-1102.1(a).

(b) *Indefinite Quantity.*

INDEFINITE QUANTITY (1965 AUG)

(a) This is an indefinite quantity contract for the supplies or services specified in the Schedule and for the period set forth therein. Delivery or performance shall be made only as authorized by orders issued in accordance with the "Ordering" clause of this contract. The quantities of supplies or services specified herein are estimates only and are not purchased hereby.

(b) The Contractor shall furnish to the Government, when and if ordered, the supplies or services set forth in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order, and the rights and obligations of the Contractor and the Government respecting those orders shall be governed by the terms of the contract to the same extent as if completed during the effective period of this contract, *provided* that the Contractor shall not be required to make any deliveries under this contract after .....(*date*).

(d) The Government may issue orders which provide for delivery to or performance at multiple destinations.

(End of clause)

7-1102.4 *Material Inspection and Receiving Report*. Insert the clause in 7-104.62 except in negotiated subsistence acquisitions and contracts for tanker/barge shipments of bulk petroleum products.

7-1102.5 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

Part 12—Mortuary Services Contracts

7-1200 Scope of Part. This Part sets forth uniform contract clauses for mortuary services (care of remains) contracts (see Section XXII, Part 5). These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7-1201 Required Clauses for Other Than Port of Entry Requirements Contracts. The following clauses shall be inserted in all care of remains contracts except those for port of entry requirements.

7-1201.1 *Requirements.*

REQUIREMENTS (1965 OCT)

(a) This is a requirements contract for the supplies or services specified in the Schedule, and for the period set forth in this contract. Delivery of supplies or performance of services shall be made only as authorized by orders issued in accordance with the clause entitled "Delivery Orders and Invoices". The quantities of supplies or services specified herein are estimates only and are not purchased hereby. Except as may be otherwise provided herein, in the event the Government's requirements for supplies or services set forth in the Schedule do not result in orders in the amounts or quantities described as "estimated" or "maximum" in the Schedule, such event shall not constitute the basis for an equitable price adjustment under this contract.

(b) The Government shall order from the Contractor all the supplies, services, and transportation set forth in the Schedule which are required to be purchased by the Government activity named herein, and the Contractor shall furnish to the Government such supplies, services, and transportation as may be ordered by the Contracting Officer. The Government, however, reserves the right not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other cogent reason. In the event of an epidemic or other emergency, the Contractor shall not be required to provide services in excess of the capacity of his facilities.

(End of clause)

7-1201.2 *Contract Period.*

CONTRACT PERIOD (1965 OCT)

Any contract awarded as a result of bids submitted under this Invitation for Bids shall extend from ..... through .....

(End of clause)

7-1201.3 *Area of Performance.*

AREA OF PERFORMANCE (1974 APR)

(a) The area of performance is specified in Attachment 1 to this contract. This contract includes taking possession of the remains at the place where they are located, transporting them to the Contractor's place of preparation and transporting them thereafter to a place designated by the Contracting Officer. The Contractor shall not be entitled to reimbursement for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(b) If remains are located outside the area of performance, the Government may call on the Contractor or obtain the services elsewhere. If the Government calls on the Contractor, the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance. If the Government elects to have the remains brought into the area of performance by some other means, it may require the Contractor to perform after the remains are within the area of performance.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36475

7-1702.17 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1702.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1702.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1702.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1702.21 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1702.22 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-1702.23 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1703 Clauses To Be Used When Special Construction Charges Are Expected. Insert the following clauses in contracts with common carriers whenever it is expected that in order to secure the services and facilities it will be necessary for the Government to reimburse the contractor for, or to assume a contingent termination liability for, all or part of the costs of constructing or providing the facilities or equipment. If the necessity of paying such charges or of assuming such a liability arises subsequent to the execution of the contract, these clauses shall be included in the contract by supplemental agreement. With the exception of the clauses prescribed by 7-1703.1 and 7-1703.2, the clauses prescribed by this paragraph may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

7-1703.1 *Labor Standards for Construction Work.* Except as provided in 18-703.3 and 18-703.4 when the special construction involves construction (as defined in 18-101.1) of a public building or public work, and under 12-106 the construction labor standards are applicable (see 22-1010.2), insert the clause in 7-705.5.

7-1703.2 *Buy American — Construction Contracts.* In accordance with 7-602.20 and 7-602.24, insert the clauses therein whenever the contract involves construction (as defined in 18-101.1).

7-1703.3 *Special Construction and Equipment Charges.*

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (1971 APR)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government, of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

7-1703.4 *Title to Communication Facilities and Equipment.*

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (1971 APR)

Notwithstanding payment by the Government of any of the Contractor's costs of constructing communication facilities and equipment, title to all contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

7-1703.5 *Subcontracts.* In accordance with the requirements of 23-201, insert an appropriate clause entitled Subcontracts.

7-1703.6 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-1703.7 *Minority Business Enterprises.* In accordance with 1-332, insert the appropriate clause or clauses in 7-104.36.

right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under this contract.

(d) This clause shall be deemed to constitute the exclusive contractual remedy of the Contractor for adjustment arising out of the decision to apply the Service Contract Act, as amended, to the work covered by this contract. Failure of the parties to reach an understanding as to such adjustment shall be considered a dispute subject to the Disputes clause of the contract.

(End of clause)

7-1903.42 *Patent Rights.* When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-203.23.

7-1903.43 *Government Delay of Work.* The clause in 7-104.77 may be inserted.

7-1903.44 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1903.45 *Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.* In accordance with 7-104.81, insert the clause therein.

7-1903.46 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1903.47 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-1903.48 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1903.49 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-1903.50 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1903.51 *Value Engineering.*

(a) In accordance with 1-1702, insert the appropriate clauses in 7-104.44 modified, as required, to suit the particular procurement involved.

(b) Insert additional paragraph as follows:

( ) Contractor proposals which eliminate, modify or substitute new procedures for contractually required work procedures shall qualify for instant contract savings sharing. If this is a time and material or labor-hour contract, the "effect of the proposal on the Contractor's cost of performance," for purposes of the instant contract sharing paragraph (e)(i) of the clause, shall be determined by (i) multiplying the time per item saved by the elimination, modification, or substitution by the labor-hour rate agreed upon for the workers involved, and then (ii) multiplying the result by the number of items over which the task has been deleted, and (iii) taking into account in the usual manner the Contractor's cost of developing the proposal and of implementing the change, and increased Government costs related to implementing the proposal. (The result under (i) would be the unit cost reduction for purposes of determining future acquisition savings.)

(End of clause paragraph)

7-1903.52 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1903.53 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1903.54 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1903.55 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1903.56 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1903.57 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1903.58 *Contract Certification - Wage and Price Standards.* In accordance with 1-341(f), include the clause in 7-104.101.

7-1903.59 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1904 Additional Clauses for Use in Fixed-Price Service Contracts. The following clauses may be inserted in fixed price service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1904.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-1910.4 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-1910.5 *Reserved.*

7-1910.6 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-1910.7 *Patent Rights.* When experimental, developmental or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-1910.8 *Communist Areas.* In accordance with 6-403, insert the clause in 7-103.15.

7-1910.9 *Reporting of Royalties.* In accordance with 9-110, insert the clause in 7-104.8(a).

7-1910.10 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1910.11 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-1910.12 *Military Security Requirements.* In accordance with 7-104.12(a), insert the clause therein with the modification specified in 7-204.12.

7-1910.13 *Gratuities.* Insert the clause in 7-104.16, except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense Appropriation Acts.

7-1910.14 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1910.15 *Ocean Transport of Government Owned Supplies.* In accordance with 1-1404(a), insert the clause in 7-104.19(a).

7-1910.16 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-1910.17 *Flight Risks.* In accordance with 10-504, insert the clause in 7-204.21.

7-1910.18 *Taxes.* In accordance with 11-403.2, insert the appropriate clause in 7-204.24.

7-1910.19 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the appropriate clauses in 7-104.34.

7-1910.20 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-1910.21 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-1910.22 *Value Engineering.* In accordance with 1-1702, insert the appropriate clauses in 7-104.44, substituting the clause paragraph (e)(1)(ii) in 7-204.32(b) or (c) for paragraph (e)(1)(ii) of the clause in 7-104.44 and as modified by clause paragraph (k) in 7-1903.51.

7-1910.23 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-1910.24 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-1910.25 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-1910.26 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3).

7-1910.27 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-1910.28 *United States Products and Services (Balance of Payments).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-1910.29 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-1910.30 *Use of Excess and Near Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-1910.31 *Service Contract Act of 1965.* In accordance with 7-1903.41, insert the appropriate clause therein.

7-1910.32 *Convict Labor.* In accordance with Section XII, Part 2, insert the clause in 7-104.17.

7-1910.33 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1910.34 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1910.35 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-1910.36 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1910.37 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1910.38 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1910.39 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1910.40 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1910.41 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1911 Additional Clauses for Use in Cost Reimbursement Service Contracts. The following clauses may be included in cost reimbursement service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1911.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-1911.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-1911.3 *Options.* Examples of option clauses appear in 7-104.27 and 7-1903.22. See Section I, Part 15, for specific instructions, prohibitions and procedures.

7-1911.4 *Stop Work Orders.* In accordance with 7-205.6, the clause prescribed therein may be inserted.

7-1911.5 *Clauses for Contracts Involving Furnishing of Supplies.* In cost reimbursement service contracts which involve the furnishing of supplies, the following clauses shall be included in addition to those prescribed by 7-1909.

Changes clause in 7-203.2;

Inspection of Supplies and Correction of Defects clause in 7-203.5; and

Walsh-Healey Public Contracts Act clause in 7-103.17.

In addition, applicable clauses in 7-1910 shall be included. Any clause applicable only to supplies or only to services shall be so labeled.

(b) If the contractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, evidence of such may be submitted in lieu of the comprehensive plan mentioned above. In such event, the Contracting Officer will determine the extent to which such systems shall be reviewed to assure continued compliance with the criteria.

(c) The offeror shall provide information and assistance as requested by the Contracting Officer for evaluation of compliance with the cited criteria.

(d) The offeror's plan for Cost/Schedule Control Systems will be evaluated prior to contract award. Upon acceptance of the Cost/Schedule Control Systems, a description of the accepted systems will be referenced in the contract.

(e) Subcontractor selection for application of the C/SCSC will be by agreement between the prime contractor and the Government. The prime contractor will contractually require the selected subcontractors to comply with the criteria. However, demonstrations and reviews of these selected subcontractors' management systems may be performed by the procuring authority when requested by either the prime or subcontractor.

(End of provision)

7-2003.44 *Inconsistency Between English Version and Translation of Contract.* In accordance with 3-608.2(b)(2)(ii)(B), insert the following provision.

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (1965 APR)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of provision)

7-2003.45 *Invoices.* In accordance with 3-608.2(d)(ix), insert the following provision.

INVOICES (1974 APR)

Contractor's invoices must be submitted before payment can be made. Contractor will be paid on the basis of his invoice which must state (1) the starting and ending dates and (2) that orders have been placed in effect for the addressees required, or (3) that the orders will be placed in effect upon receipt of payment.

(End of provision)

7-2003.46 *Notice To Supplier.* In accordance with 3-608.3(c), insert the following provision.

NOTICE TO SUPPLIER (1971 NOV)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Procuring Contracting Officer. If you cannot perform in exact accordance with this order WITHHOLD PERFORMANCE and notify the Contracting Officer immediately, giving your quotation

(End of provision)

7-2003.47 *Buy American - Balance of Payments Program Certificate.* Insert the following in all solicitations and resultant contracts in which the Buy American Act and Balance of Payments Program clause at 7-104.3 is used.

BUY AMERICAN - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (1980 OCT)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act and Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

Excluded End Products

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

(List as necessary)

(b) Offers will be evaluated by giving certain preferences to domestic end products and foreign qualifying country end products over foreign nonqualifying country end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products or they will be deemed nonqualifying country end products. Offers must certify by inserting the applicable line item numbers in the appropriate brackets:

(i) The offeror certifies that the following supplies qualify as "participating country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program."
[_____]
(Insert line item no.)

(ii) The offeror certifies that the following supplies qualify as "FMS/offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program," if the Government makes the necessary waivers. [_____]
(Insert line item no.)

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program." [_____]
(Insert line item no.)

(c) Offers will be evaluated in accordance with the policies and procedures of Section VI.

(End of certificate)

7-2003.48 *Domestic Wool Preference.* In accordance with 6-304.2, complete and insert the following clause.

DOMESTIC WOOL PREFERENCE (1953 MAR)

(a) It is Congressional policy that, in Department of Defense procurements, preference shall be given to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be procured as and when needed at United States market prices.

(b) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is not more than 10 percent above the average of the prices (for usable grades and types) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on bids or proposals offering domestically produced articles of which the wool component is 100 percent domestic wool, *provided* that such bids or proposals are considered reasonable and otherwise acceptable.

(c) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is more than 10 percent above the average of the prices (for usable grades and types) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (b) hereof, there will be added to each bid or proposal offering articles of which the wool component is 100 percent foreign wool an evaluation factor of $..... per yard or per item, and there will be added to each bid or proposal offering articles of which the wool component is a blend of domestic and foreign wool that part of the evaluation factor which is in direct proportion to the percentage of foreign wool to be used, and award will be made to the low acceptable bidder.

(d) For the purposes of (b) and (c) above, the average market price of domestic wool of usable grades shall be the average market price of the representative types and grades set forth in Armed Services Procurement Regulation 6-304.2(f) within that one of the categories therein set forth which includes wool which would meet the specifications, and the average of the prices which reflect the current incentive price established by the Secretary of Agriculture shall be the average of the prices set forth in ASPR 6-304.2(f) for that category.

(e) While bids or proposals offering articles using foreign wool may be considered and evaluated, as stated above, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its possessions, or Puerto Rico, as required by the contract clause entitled "Preference for Certain Domestic Commodities." This requirement is satisfied as to wool noils, reprocessed or reused wool if the reprocessing (i.e., garnetting or combing) and ensuing manufacture is performed in the United States, its possessions, or Puerto Rico.

(f) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (c) hereof, a satisfactory quality and sufficient quantity of domestic wool cannot be procured as and when needed at United States market prices.

(End of clause)

7-2003.49 *Supplies to be Accorded Duty-Free Entry.* When the *Duty Free Entry for Certain Specified Items* clause in 7-104.31(a) is used, the following clause shall be inserted in the Schedule.

SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY (1965 DEC)

In accordance with paragraph (a) of the clause hereof entitled "Duty-Free Entry for Certain Specified Items," the following supplies are hereby identified as supplies to be accorded duty-free entry:..... ....

(End of clause)

7-2003.50 *United States End Product Certification for Purchases in Implementation of a Military Assistance Program.* In accordance with 6-703.3, insert the following provision.

UNITED STATES PRODUCTS CERTIFICATE (MILITARY ASSISTANCE PROGRAM) (1962 DEC)

To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the bidder or offeror hereby certifies that each such item furnished will be a United States end product (as defined in the contract clause entitled United States Products); that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States; and that he is a domestic concern.

(End of provision)

7-2003.51 *United States End Products Requirement for Purchases in Implementation of a Military Assistance Program.* The following clause shall be inserted in all contracts for end products for the Military Assistance Program other than those excepted pursuant to 6-702.

UNITED STATES PRODUCTS (MILITARY ASSISTANCE PROGRAM) (1962 DEC)

(a) To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the Contractor agrees that there will be delivered under this contract only United States end products.

(b) For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in end products;

(ii) "end products" means those articles, materials, and supplies, which are acquired under this contract for public use; and

(iii) a "United States end product" means

(A) an unmanufactured end product which has been mined or produced in the United States, and

(B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(End of clause)

7-2003.52 *Reserved.*

7-2003.53 *Reserved.*

7-2003.54 *Reserved.*

7-2003.55 *Reserved.*

7-2003.56 *Reserved.*

7-2003.57 *Applicability of Complete Wage Rate Decision.* In accordance with 18-704.2(f), insert the following provision.

APPLICABILITY OF COMPLETE WAGE RATE DECISION (1974 APR)

In addition to the wage rates in this solicitation, the complete decision of the Secretary of Labor contains wage rates for other classes of laborers and mechanics. Because it does not appear

7-2003.75 *Reserved.*

7-2003.76 *Identification of Restricted Rights Computer Software* In accordance with 9-603(b), insert the following provision.

IDENTIFICATION OF RESTRICTED RIGHTS COMPUTER SOFTWARE (1977 APR)

The offeror's attention is called to the requirement in the "*Rights in Technical Data and Computer Software*" clause that any restrictions on the Government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which he desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of clause)

7-2003.77 *Licenses and Permits* In accordance with 22-600.3, insert the following clause.

LICENSES AND PERMITS (1977 APR)

Offerors without necessary operating authority may submit offers, but the offerors shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits prior to award of a resultant contract and for complying with all laws, ordinances, statutes and regulations in connection with the furnishing of the services herein.

(End of clause)

7-2003.78 *Notice of Compensation for Professional Employees.* In accordance with 12-1007.3, insert the following notice.

NOTICE OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (1978 JUN)

Note the provisions relating to evaluation of compensation for professional employees set forth elsewhere in this Solicitation. Failure to comply with such provisions may constitute sufficient cause to justify non-selection of a proposal. The total compensation plan required to be submitted by the offeror will be viewed as being within the purview of Public Law 87-653.

(End of notice)

7-2003.79 *Evaluation of Compensation for Professional Employees.* In accordance with 12-1007.3, insert the following provision.

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (1978 JUN)

(a) Total compensation (salary and fringe benefits) of professional employees under service contracts may, in some cases be lowered by recompetition of such contracts. Such lowering of compensation can be detrimental in obtaining the necessary quality of professional services needed for adequate performance of service contracts. It is, therefore, in the best interest of the Government that professional employees, as defined in 29 CFR 541, be properly and fairly compensated in such contracts. As a part of their proposals, offerors will submit a "Total Compensation Plan" (salaries and fringe benefits) for such professional employees for evaluation purposes. The Government will assess the "Total Compensation Plan" to assure that such compensation reflects a sound management approach and an understanding of the requirements to be performed. It will include an assessment of the offeror's ability to provide uninterrupted work of high quality. The total compensation proposed will be evaluated in terms of enhancing recruitment and retention of personnel and its realism and consistency with a total plan for compensation (both salaries and fringe benefits).

(b) In establishing compensation levels for professional employees, the total compensation (both salaries and fringe benefits) proposed, shall reflect a clear understanding of the requirement of the work to be accomplished and the suitability of the proposed compensation structure to obtain and retain qualified personnel to meet mission objectives. The salary rates or ranges must recognize the distinct differences in professional skills and the complexity of varied disciplines as well as job difficulty. Proposals offering total compensation levels less than currently being paid by the predecessor contractor, if any, for the same work will be evaluated, in addition to the above, on the basis of maintaining program continuity, uninterrupted work of high quality, and availability of required competent professional employees. Offerors are cautioned that instances of lowered compensation for essentially the same professional work may be considered a lack of sound management judgment in addition to indicating a lack of understanding of the requirement.

(c) Proposals which are unrealistically low or do not reflect a reasonable relationship of compensation to the professional job categories such as to impair the contractor's ability to recruit and retain competent professional employees, may be viewed as reflecting a failure to comprehend the complexity of the contract requirements. The Government is concerned with the quality and stability of the work force to be employed on this contract. The compensation data required will be used in evaluation of the offeror's understanding of the contract requirements.

(d) An assessment of the potential for adverse effect upon performance and maintenance of the required numbers of employees with requisite skills resulting from an unrealistically low compensation structure will also be made.

(End of provision)

The invoice or voucher, if proper, shall be approved by the TCO by noting thereon the following:

Payment in the amount of $.....approved.

8-213.2 *Final Payment.*

(a) *Negotiated Settlement.* Upon execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by Determination.* In the event of a settlement by determination:

(i) if the contractor has not appealed the determination a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment; or

(ii) if the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to (i) above may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination. Interest may, however, be allowed on successful contractor appeals to the contracting officer's determination in accordance with the Payment of Interest on Contractors' Claims clause in 7-104.82.

8-214 Cost Principles. The cost principles and procedures set forth in the applicable Part of Section XV shall, subject to the general policies set forth in 8-301, (i) be used in claiming, negotiating, or determining costs relevant to termination settlements under fixed price and cost reimbursement type contracts with other than educational institutions; and (ii) be a guide for the negotiation of settlements under fixed price or cost reimbursement type contracts for experimental, developmental or research work with educational institutions (but see 15-103(iii)).

8-215 Settlement of Unadjusted Contract Changes.

(a) Prior to settlement of a completely terminated contract, the TCO shall obtain from the purchasing office a list of all unadjusted contract changes pertaining thereto. The TCO shall settle, as part of final settlement, all unadjusted contract changes after obtaining the recommendations of the purchasing office concerning such changes.

(b) When the contract has been partially terminated, any outstanding unadjusted contract changes will be handled by the purchasing office. However, delegation may be made by the PCO to the TCO.

36482 Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

TERMINATION OF CONTRACTS

8-216 Terminated Contracts With Canadian Commercial Corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (i) the Letter of Agreement between the Department of Defence Production (Canada) and the United States Department of Defense (6-1401(a)); (ii) policies in Section VI, Part 5, and Section VIII; and (iii) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination claim of Canadian Commercial Corporation shall be submitted in the form prescribed in 8-802, and shall reflect the amount of settlements with subcontractors. The letter transmitting the claim shall certify that (i) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (ii) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of 8-210 and 8-805.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to 6-504.3. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corporation to the TCO for screening in accordance with the provisions of 24-205. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination claims submitted by United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DCASMA, New York) for settlement in accordance with this Section and Section XXIV. Upon completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination claim submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

8-217 Settlement of Terminated Contracts With Incentive Provisions.

(a) *FPI Contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (i) of the clause in 7-108.1.

(1) *Partial Termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (i) of the clause in 7-108.1 and paragraph (k) of the clause in 7-108.2. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbur-

BONDS, INSURANCE, AND INDEMNIFICATION

Part 2—Sureties

10-200 General. Every bond required or used in connection with a contract for supplies, services, or construction shall be supported by good and sufficient surety (corporate or individual) except as provided in 10-202.

10-201 Requirements of Sureties.

10-201.1 *Corporate Sureties and Cosureties.*

(a) *Corporate Sureties.* In connection with contracts for supplies, services, or construction to be delivered or performed in the United States, its possessions, or Puerto Rico:

(i) solicitations shall not require that only corporate sureties may be furnished or that a particular corporate surety be furnished, except as may be otherwise specifically provided (*e.g.*, position schedule bonds may be obtained only from corporate sureties); and

(ii) any corporate surety offered for a bond furnished the Government, or furnished pursuant to a Government contractual requirement, where the contracting officer has authority to approve the sufficiency of the surety, must appear on the Treasury Department List (TD Circular 570) and the amount of the bond must not be in excess of the underwriting limits stated in that list.

In connection with contracts to be performed in Panama, corporate Panamanian surety companies which are acceptable on bonds required by the Panama Canal Commission may be accepted in addition to the corporate sureties appearing on the Treasury List. The acceptability of Panamanian sureties shall be subject to the conditions and restrictions (including any requirement for security deposits) similar to those imposed by the Panama Canal Commission and to a determination by the contracting officer that the amount of the bond is commensurate with the underwriting capacity of the surety. For contracts to be performed in a foreign country, sureties not appearing on Treasury Department Circular 570 are acceptable if it is determined by the contracting officer that it is impracticable for the contractor to use Treasury-listed sureties.

(b) *Corporate Cosureties.* More than one corporate surety may be accepted as cosurety upon any recognizance, stipulation, bond, or undertaking in connection with contracts for supplies, services, or construction. In no case, however, shall the liability of any such cosurety exceed the maximum penal sum which it is qualified to underwrite on any one obligation. It is not necessary that each corporate surety obligate itself for the full amount of the bond. Each corporate surety may limit its liability in the bond to a specified sum. The sureties must bind themselves jointly and separately for the purpose of allowing a joint action or actions against any or all of them. Where the bond is to be executed by two or more corporate sureties, Standard Form 25 shall be used in the case of a performance bond and Standard Form 25-A in the case of a payment bond. On bonds covering supply or service contracts where the amount of the bond exceeds the underwriting limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required reinsurance underwriting capacity. Reinsurance may also protect bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 270a - 270d) covering contracts for the construction, alteration, or repair of any public building or public work of the United States, as well as other types of Federal bonds when the amount of the bond exceeds the underwriting limitation of the corporate surety.

Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company.

(c) *Termination of Authority To Qualify as Surety.* The Treasury Department issues supplements to the Treasury Department Circular 570, notifying all Federal agencies of the termination of the authority of a specified corporate surety company to qualify as a surety on Federal bonds. Contracting activities will be notified of these supplements in accordance with the procedures of their Departments. Upon receipt of notification of termination of a company's authority to qualify as surety on Federal bonds, each contracting officer concerned shall secure new bonds with acceptable sureties in lieu of any outstanding bonds with the named company.

10-201.2 *Individual Sureties.*

(a) *Acceptability.* Individual sureties are acceptable for all types of bonds other than position schedule bonds. An individual surety shall be a citizen of the United States, except that if the contract and bond are executed in any foreign country, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or any other territory or possession of the United States, such surety need only be a permanent resident of the place of execution of the contract and bond.

(b) *Number.* If individual sureties are used, there shall be at least two responsible individuals on each bond.

(c) *Extent of Liability.* The liability of each individual surety shall extend to the entire penal amount of the bond.

(d) *Justification.* The contracting officer, in evaluating bonds and consents of surety underwritten by individual sureties, must first ascertain that all documents, including the Affidavits of Individual Surety required by Instruction No. 4b on the reverse of Standard Form 24, "Bid Bond," and Instruction No. 3b on the reverse of Standard Form 25, "Performance Bond," and Standard Form 25-A, "Payment Bond," have been completely filled out and are properly executed. The contracting officer must next ascertain that each individual surety, underwriting a bond or consent of surety which increases the penal amount of a bond previously furnished, justifies his net worth "in a sum not less than the penalty of the bond" as required by Instruction No. 4 on the reverse of Standard Form 28, "Affidavit of Individual Surety." Since individual sureties are jointly and severally liable in the event of default by the principal, each individual surety must list on Standard Form 28 a net worth at least equal to the total penal amount of the bond or consent of surety. Example: If performance and payment bonds on a construction contract have penal amounts of $40,000 and $20,000, respectively, each individual surety must show a net worth of at least $60,000 to have the contracting officer accept his underwriting of such bonds. Normally net worth will be the amount indicated by the individual surety on line g, block 7, of Standard Form 28. However, the contracting officer is expected to consider all relevant information furnished by the individual surety on Standard Form 28 and make an independent determination of the individual surety's net worth based on the contracting officer's own best judgment. Example: Normally the "fair value" of real estate is a more realistic figure than the "assessed value" for taxation purposes. However, there may be situations where the reverse is true, for the purpose of determining net worth, in which case the contracting officer may determine net worth is a figure other than that entered on line g, block 7 of Standard Form 28. The contracting officer also should scrutinize closely the information entered in block 10

(i) the worker is paid or is in an approved work training program on a voluntary basis;

(ii) representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(iv) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.

(d) With regard to the certification by the Attorney General to employ Non-Federal prisoners as cited in subparagraph 12-203(c)(3) above, Executive Order 11755 also provides that after notice and opportunity for hearing, the Attorney General shall revoke any such certification if he finds that the work-release program of the jurisdiction involved is not being conducted in conformity with the requirements of the order or with its intent or purpose.

12-204 Contract Clause. In accordance with this Part 2 of Section XII, insert the clause in 7-104.17.

Part 3—Contract Work Hours and Safety Standards Act

12-300 Scope of Part. This Part deals with the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) applicable to contracts other than construction contracts as defined and covered in Section XVIII, Part 7.

12-301 Statutory Requirement. In accordance with the requirement of the Contract Work Hours and Safety Standards Act (40 U.S.C. Code 327-333), certain contracts entered into by any Department shall contain a clause to the effect that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day or 40 hours in any workweek unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day or 40 hours in any workweek at not less than one and one half times the basic rate of pay.

12-302 Applicability. The requirement set forth in 12-301 applies, except as stated below, to all contracts (including, for this purpose, basic ordering agreements and blanket purchase agreements (see 3-410.2 and 3-605)) which may require or involve the employment of laborers or mechanics, including guards and watchmen, either by a contractor or by any subcontractor. The requirement does not apply to the following kinds of contracts:

(i) contracts (or portions thereof) to be performed in a foreign country or within territory under the jurisdiction of the United States other than the following: a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island, to the extent that such contracts (or portions thereof) may require or involve the employment of laborers or mechanics there;

(ii) contracts (or portions thereof) for supplies in connection with which any required services are merely incidental to the sale and do not require substantial employment of laborers or mechanics;

(iii) contracts (or portions thereof) for materials or articles (other than armor or armor plate) usually bought in the open market (although the requirement does apply, and the contract must so provide, with respect to any contract involving the performance of any class work which is ordinarily, and not merely occasionally or to a limited extent, performed by the Government);

(iv) contracts (or portions thereof) subject to the provisions of the Walsh-Healey Public Contracts Act (see Part 6 of this Section); and

(v) contracts of $2,500 or less in aggregate amount. In arriving at the aggregate amount involved, there must be included all property and services which would normally be grouped together in a single transaction. In the case of a basic ordering agreement or blanket purchase agreement, such amount shall be the aggregate amount of all orders estimated to be placed thereunder for one year after the

construction contract as determined by regulations of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

(e) "*Construction work*" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

(f) "*Contract*" means any Government contract or any Federally assisted construction contract.

(g) "*Contracting Agency*" means any Department, Agency, establishment, or instrumentality in the Executive Branch of the Government, including any wholly-owned Government corporation which enters into contracts.

(h) "*Contractor*" means, unless otherwise indicated, a prime contractor or subcontractor.

(i) "*Director, OFCCP*" means the Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

(j) "*Equal Opportunity Clause*" means the contract provisions as set forth in 7-103.18(a) or (b), as appropriate.

(k) "*Federally assisted construction contract*" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(l) "*Government contract*" means any agreement or modification thereof between any contracting officer of the Department of Defense and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "*services*," as used in this paragraph includes, but is not limited to the following services: utility, construction, transportation, research, insurance, and fund depository. The term "*Government contract*" does not include (i) agreements in which the parties stand in the relationship of employer and employee, and (ii) Federally assisted construction contracts, and (iii) contracts for the sale of personal property by the Government, and for the sale or purchase of real property by the Government.

(m) "*Order*" means Parts II, III, and IV of Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319), and any Executive Order amending such Order, and any other Executive Order superseding such Order.

(n) "*Prime contractor*" means any person holding a contract and any person who has held a contract subject to the Order.

(o) "*Recruiting and training agency*" means any person who refers workers to any contractor or subcontractor, or who provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

(p) "*Site of construction*" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor or other participating party meets a demand or performs a function relating to the contract or subcontract.

(q) "*Subcontract*" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee): (i) for the furnishing of supplies or services or for use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or (ii) under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(r) "*Subcontractor*" means any person holding a subcontract and any person who has held a subcontract subject to the Order. The term "first-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(s) "*United States*" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

12-804 Program Responsibilities.

(a) The Secretary of Labor is responsible for the administration of Parts II and III of Executive Order No. 11246, as amended, and for the adoption of such rules and regulations and the issuance of such orders as the Secretary deems necessary and appropriate to achieve the purposes thereof. The Secretary of Labor has established within the Department of Labor an Office of Federal Contract Compliance Programs (OFCCP) under a Director who has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the Order, except the power to issue rules and regulations of a general nature.

(b) Heads of Departments or Agencies which award or administer contracts are responsible for assuring that the provisions of this Regulation are carried out within their respective components and for cooperating with and assisting the OFCCP in fulfilling its responsibilities. As used in this Part, "*Head of Department or Agency*" means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department, the Director of the National Security Agency, the Director and Deputy Director of the Defense Logistics Agency, the Director of the Defense Communications Agency, the Director of the Defense Civil Preparedness Agency, or the Director of the Defense Mapping Agency.

Part 13—Employment of the Handicapped

12-1300 Scope of Part. This Part sets forth policies and procedures for carrying out the requirements of Section 503 of the Rehabilitation Act of 1973, as amended, Public Laws 93-112 and 93-516, (hereinafter referred to as the "Act"), Executive Order 11758 of 15 January 1974, and the regulations of the Secretary of Labor (41 CFR Part 60-741 effective 17 May 1976, formerly 20 CFR Part 741)

12-1301 Policy. The Act applies to all Government contracts and subcontracts for personal property and nonpersonal services for $2,500 or more. Under the Act, Government contractors and subcontractors are required to take affirmative action to employ, and advance in employment, qualified handicapped individuals without discrimination as to their physical or mental handicap.

12-1302 Applicability.

(a) *General.* Except as otherwise provided herein, every contract, as defined in 1-201.4, for $2,500 or more or expected to exceed $2,500, shall include the clause in 7-103.28. No contracting officer, contractor, or subcontractor shall procure supplies or services in less than usual quantities to avoid the applicability of this clause.

(b) *Work Outside the United States.* The requirements of the clause in 7-103.28 are waived with regard to work performed outside the United States by employees who were not recruited within the United States. For the purposes of this paragraph, the term "*United States*" includes the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) *Contracts with State or Local Governments.* The requirements of the clause in 7-103.28 in any contract or subcontract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) *Waivers.*

(1) The Secretary of Defense, with the concurrence of the Department of Labor, may waive any contract or subcontract from any or all of the provisions of the clause in 7-103.28 when he deems that special circumstances in the national interest so require. The Secretary of Defense, with the concurrence of the Department of Labor, may also waive groups or categories of contracts or subcontracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where group waivers will

substantially contribute to convenience in administration of section 503 of the Act.

(2) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirements is necessary to the national security.

(3) The contracting officer shall submit requests for waiver under (1) and (2) above to the ASD (MRA&L) in accordance with Departmental procedures.

(4) In accordance with the regulations of the Department of Labor (41 CFR 60-741.3(c)), an exemption granted for a particular class of contracts or subcontracts may be withdrawn for any contract or subcontract within that class whenever such withdrawal is considered by the Department of Labor to be necessary or appropriate in order to achieve the purposes of the Act. The withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawals shall not apply unless the withdrawal is made more than ten calendar days before the date set for the opening of the bid.

12-1303 Reserved.

12-1304 Department of Labor Notices. In accordance with the clause in 7-103.28, the ACO shall furnish to the contractor official, Department of Labor notices which state the contractor's obligations and the handicapped individual's rights under the Employment of the Handicapped program. Such notices may be obtained from the appropriate addressee listed in 12-607.

12-1305 Collective Bargaining Agreements. Whenever performance in accordance with the clause in 7-103.28 may necessitate a revision of a collective bargaining agreement, the labor union or unions which are parties to such agreements shall be advised that the Department of Labor will give them appropriate opportunity to present their views. In no event will the contracting officer or any of his representatives, engage in any discussions with representatives either of the contractor or of labor concerning any aspect of the collective bargaining agreement to which they are parties.

12-1306 Complaint Procedures. Whenever an activity receives a complaint relating to the administration of the Act, the activity shall forward the complaint, in accordance with Departmental procedures, to the ASD (MRA&L). No resolution or investigation of such complaint shall be undertaken by the activity in the absence of specific instructions from the ASD (MRA&L).

12-1307 Sanctions. Whenever the contracting officer is notified that the Department of Labor has imposed sanctions on a contractor for violations of the clause in 7-103.28, which sanctions include withholding of progress payments, termination or suspension of the contract, or debarment of the contractor, he shall take appropriate action, as soon as possible thereafter to implement the sanctions.

Part 14—Affirmative Action for Disabled and Vietnam Veterans

12-1400 Scope of Part. This Part sets forth policies and procedures for carrying out the requirements of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, Public Law 92-540 and 93-508 (38 U.S.C. 2012), hereinafter referred to as the "Act"; Executive Order 11701 of January 24, 1973 (38 FR 2675); and the regulations of the Secretary of Labor (41 CFR Part 60-250, effective June 18, 1976, formerly 41 CFR Part 50-250).

12-1401 Policy. The Act applies to all Government contracts and subcontracts for personal property and nonpersonal services for $10,000 or more. Under the Act, Government contractors and subcontractors are required to list all suitable employment openings and to take affirmative action to employ disabled veterans and veterans of the Vietnam era without discrimination based on their disability.

12-1402 Applicability.

(a) *General.* Except as otherwise provided herein, every contract, as defined in 1-201.4, for $10,000 or more or expected to exceed $10,000, shall include the clause in 7-103.27. No contracting officer, contractor, or subcontractor shall procure supplies or services in less than usual quantities to avoid the applicability of this clause.

(b) *Work Outside the United States.* The requirements of the clause in 7-103.27 are waived with regard to work performed outside the United States by employees who were not recruited within the United States. For the purposes of this paragraph, the term "United States" includes the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) *Contracts with State or Local Governments.* The requirements of the clause in 7-103.27 in any contract or subcontract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) *Waivers.*

(1) The Secretary of Defense, with the concurrence of the Department of Labor, may waive any contract or subcontract from any or all of the provisions of the clause in 7-103.27 when he deems that special circumstances in the national interest so require. The Secretary of Defense, with the concurrence of the Department of Labor, may also waive groups or categories of contracts or subcontracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where group waivers will substantially contribute to convenience in administration of the Act.

(2) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirements is necessary to the national security.

(3) The contracting officer shall submit requests for waiver under (1) and (2) above to the OUSD(RE)(CPA) in accordance with Departmental procedures.

(4) In accordance with the regulations of the Department of Labor (41 CFR 60-250.3(c)) a waiver granted for a particular class of contracts or subcontracts may be withdrawn for any contract or subcontract within that class whenever such withdrawal is considered by the Department of Labor to be necessary or appropriate in order to achieve the purposes of the Act. The withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal is made more than ten calendar days before the date set for the opening of the bids.

12-1403 Reserved.

12-1404 Department of Labor Notices. In accordance with the clause in 7-103.27, the ACO shall furnish to the contractor appropriate notices for posting when these notices are prescribed by the Director, Office of Federal Contract Compliance Programs.

12-1405 Complaint Procedures. Whenever performance in accordance with the clause in 7-103.27 may necessitate a revision of a collective bargaining agreement, the labor union or unions which are parties to such agreements shall be advised that the Department of Labor will give them appropriate opportunity to present their views. In no event will the contracting officer or any of his representatives, engage in any discussions with representatives either of the contractor or of labor concerning any aspect of the collective bargaining agreement to which they are parties.

12-1406 Complaint Procedures. Whenever an activity receives a complaint relating to the administration of the Act, the activity shall forward the complaint, in accordance with Departmental procedures, to the ASD (MRA&L) (PA). No resolution or investigation of such complaint shall be undertaken by the activity in the absence of specific instructions from the OUSD(RE)(CPA).

12-1407 Sanctions. Whenever the contracting officer is notified that the Department of Labor has imposed sanctions on a contractor for violations of the clause in 7-103.27, which sanctions include withholding of progress payments, termination or suspension of the contract, or debarment of the contractor, he shall take appropriate action, as soon as possible thereafter to implement the sanctions.

327-333), certain contracts entered into by any Department must contain a clause (see 7-602.23(a)(ii)) to the effect that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day or 40 hours in any work week unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day or 40 hours in any work week whichever is the greater number of overtime hours at not less than one and one-half times his basic rate of pay.

18-702.2 *Department of Labor Regulations.* Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (5 U.S.C. 133z-15), the Secretary of Labor has issued regulations (Subtitle A, title 29, Code of Federal Regulations) providing for the administration and enforcement of these statutes in construction contracts. Each Department shall comply with the regulations, rulings, interpretations, and decisions the Department of Labor issued pursuant to the above provisions. If a question arises concerning such compliance, the Department concerned shall attempt to resolve it with the appropriate office of the Department of Labor. In any case where resolution of the question by higher authority is deemed appropriate, such question shall be submitted, for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (Installations and Logistics); for the Navy, to the Chief of Naval Material, ATTN: Labor Relations Advisor; for the Air Force, to the Director of Contracting and Acquisition Policy, HQ USAF, ATTN: RDC, Labor Relations; for the Defense Logistics Agency, to Headquarters, Defense Logistics Agency, DLA-AP; and for the National Security Agency, to the Director of Procurement. Any such questions which are not resolved by the foregoing procedure shall be referred to DUSDRE(AP) for further action.

18-703 Contract Clauses.

18-703.1 *Clauses for General Use.* Every construction contract in excess of $2,000 for work within the United States shall include the clauses listed below. (These clauses are set forth in 7-602.23(a).)

Davis-Bacon Act (40 U.S.C. 276a to a-7)
Contract Work Hours and Safety Standards Act—Overtime Compensation.
Apprentices and Trainees.
Payrolls and Basic Records.
Compliance With Copeland Regulations.
Withholding of Funds.
Subcontracts.
Contract Termination—Debarment.
Disputes Concerning Labor Standards.

18-703.2 *Overseas Contracts.* Every construction contract (a) in excess of $2,000 for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, or Johnston Island shall include (i) the clause entitled Contract Work Hours and Safety Standards Act—Overtime Compensation, in 7-602.23(a)(ii); (ii) the Subcontracts clause in 7-602.23(a)(vii), except that the first sentence thereof shall be modified to refer only to the clause entitled Contract Work Hours and Safety Standards Act — Overtime Compensation, Subcontracts, and Contract Termination — Debarment, and (iii) the clause entitled Contract Termination — Debarment in 7-602.23(a)(viii) except that the clause shall be modified to refer only to the

clauses entitled Contract Work Hours and Safety Standards Act—Overtime Compensation and Subcontracts; (b) in excess of $10,000 requiring payment of minimum wages determined in accordance with the Davis-Bacon Act for work in Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll or Johnston Island shall also include the clause entitled "Apprentices and Trainees" in 7-602.23(a)(iii).

18-703.3 *Contracts With a State or Political Subdivision.* In the case of construction contracts with a State or political subdivision thereof, the contract clauses in 7-602.23(a) shall be inserted therein but shall be prefaced by the provision in 7-602.23(b).

18-704 Administration and Enforcement.

18-704.1 *Policy.*

(a) *General.* To comply with the Department of Defense policy of assuring full and impartial enforcement of the labor standards laws in the administration of construction contracts, each Department shall maintain a continuing effective enforcement program which shall include:

(i) training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities;

(ii) assuring that contractors and subcontractors are informed, prior to commencement of work, of their obligations under the labor standards provisions of their contracts;

(iii) adequate payroll and on-the-site inspections and employee interviews to determine compliance, and prompt initiation of corrective action when required;

(iv) prompt investigation and disposition of complaints;

(v) prompt submission of all reports required by this Part; and

(vi) periodic review of field enforcement activities to assure compliance with applicable regulations and instructions.

(b) *Responsibility.* The contracting officer shall ascertain that the contractor is fully informed of the labor standards provisions of the contract and of his and any subcontractor's responsibilities thereunder. In order to assure that the contractors and subcontractors fully understand the labor standards provisions in their contracts and the attendant administrative requirements, the following procedures shall be followed.

(1) *Preconstruction Letters.* Promptly after award of the contract, the contracting officer shall furnish to the prime contractor a preconstruction letter calling attention to the labor standards requirements contained in the contract which relate to (i) employment of foremen, laborers, mechanics and others, (ii) wages and fringe benefits payments, payrolls and statements, (iii) differentiation between subcontractors and suppliers, (iv) additional classifications, (v) benefits to be realized by contractors and subcontractors in keeping complete work records, (vi) penalties and sanctions for violations of labor standards provisions, and (vii) the provisions of 18-701(a) which may be of consequence in contract performance. The letter shall state that the labor standards requirements are based on the following statutes and regulations: Davis-Bacon Act; Contract Work

Part 5—Contract Administration Services for non-DoD Organizations

20-501 General. Contract administration services similar in nature to those being performed for Department of Defense organizations may be performed also for other organizations pursuant to the procedures in this part. These services include quality assurance, engineering support, production progressing, pre-award surveys, price/cost analysis, termination, property administration, plant clearance, industrial security, small business industrial labor relations, transportation, contractor payment, and equal employment opportunity contract compliance review. A more detailed listing of tasks involving most of the above services is contained in 1-406.

20-502 Procedures for Performance. Department of Defense procedures will be utilized in performing contract administration services for other than Department of Defense organizations except when otherwise agreed between such organizations and the Department of Defense. To keep the number of such agreements to a minimum, nondefense organizations should be encouraged to accept Department of Defense contract administration procedures.

20-503 United States Government Departments, Agencies and Corporations. Department of Defense contract administration services components shall, upon direct request, provide contract administration services to:

(i) the National Aeronautics and Space Administration in accordance with the DoD-NASA Agreement (DoDI 5030.42); and

(ii) other United States Government Departments and Agencies, including such Government corporations as the Civil Air Patrol, National Shipping Authority, Tennessee Valley Authority, St. Lawrence Seaway Company and the Panama Canal Commission.

20-504 Department of National Defence Production (Canada). In accordance with Section VI, Part 5, Department of Defense components shall upon direct request, provide contract administration services to the Department of National Defence Production (Canada). Performance for other Canadian Government organizations shall be in accordance with 20-505.

20-505 Foreign Governments and International Agencies.

20-505.1 *Performance of Services in the United States.* Department of Defense contract administration services components shall, on receipt of requests from the DoD Central Control Point, provide contract administration services to foreign governments and international organizations who are making direct purchases from United States producers. "Direct purchase" is the purchase of defense supplies in the United States by a foreign government or contractor or international organization in which the supplies are purchased through commercial channels for use by the foreign government or international organization.

20-505.2 *Operations of DoD Central Control Point (CCP).* Requests from foreign governments and international organizations shall be forwarded to the Defense Control Administration Services Region (DCASR), New York, N.Y., which is the designated CCP. The CCP will:

(i) determine that the request is from a friendly foreign government or from an international agency in which the United States is a participant;

(ii) determine that the services requested are consistent with Department of Defense mutual security program policies (Questions as to eligibility of foreign governments or international organizations to receive services from DoD contract administration services components will be referred to the Assistant Secretary of Defense (International Security Affairs));

(iii) assure that the reimbursement arrangements are consistent with 20-506;

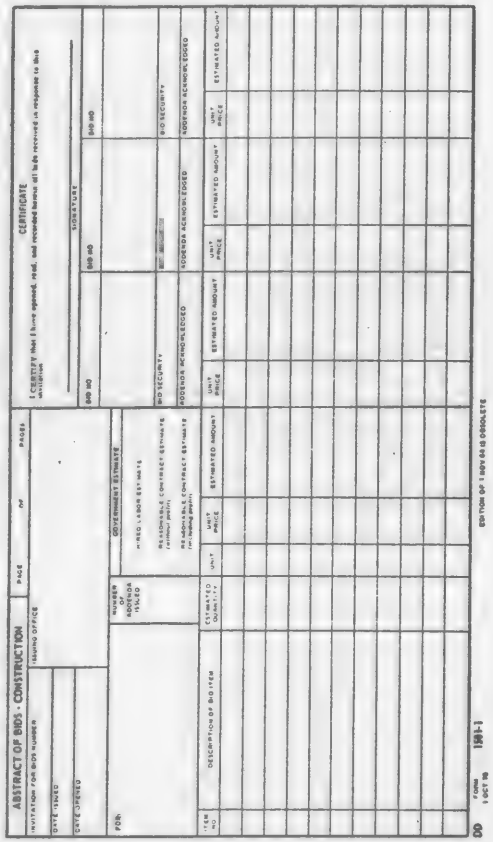
(iv) determine that the requested services can be provided, and acknowledge receipt of the request;

(v) distribute the procurement documents and related material to the cognizant contract administration services component, receive statements of costs from performing contract administration services components, bill the foreign governments or international organizations for services rendered, and distribute the remittance when received.

20-505.3 *Performance of Services Outside the United States.* When services are performed by Department of Defense contract administration services personnel outside the United States, the levels of technical capability and the administrative procedures, not already prescribed in existing laws or Department of Defense policies shall be in accordance with arrangements suitable and acceptable to the United States country teams or commanders of unified and specified commands, as appropriate.

20-506 Reimbursement. Reimbursement for services shall be required from non-DoD organizations covered by this part at the current standard rate determined by the Assistant Secretary of Defense (Comptroller). Although services will be performed for the Department of National Defence Production (Canada) on a non-reimbursable basis, normal charges shall be required for work performed for all other agencies of the Canadian Government. Services performed for contracts awarded by the Small Business Administration in accordance with 1-705.5 will be on a non-reimbursable basis. Requests for other exceptions to the above reimbursement policy shall be submitted to the ASD (Comptroller) for resolution or approval when it can be shown that such exceptions are in the best interests of the U.S. Government.

F-200.1501-1 *DD Form 1501-1: Abstract of Bids - Construction*



DEPARTMENT OF DEFENSE FORMS

F-200.1507 *DD Form 1507: Department of Defense Work Stoppage Report*

DEPARTMENT OF DEFENSE
WORK STOPPAGE REPORT

DATE

TO: FROM:

(List additional addressees on reverse)

☐ INITIAL REPORT
☐ FOLLOW-UP REPORT
☐ FINAL REPORT

DATE OF PREVIOUS REPORT

To serve as a source document for reporting work stoppages as required by ASPR 12-101.3. Detailed instructions as to disposition of this form are set forth in ASPR 12-101.3 (b), (c) and (d).

1A. NAME OF CONTRACTOR AND/OR SUBCONTRACTOR INVOLVED ADDRESS AND TELEPHONE NUMBER

GIVE LOCATION OF DISPUTE IF DIFFERENT FROM ABOVE

B. NAME OF COMPANY INDUSTRIAL RELATIONS REPRESENTATIVE

2A. ITEM PRODUCED OR PROJECT UNDER CONSTRUCTION

B. PERCENTAGE OF COMPLETION

C. END ITEM INVOLVED

D. PROGRAM INVOLVED

3. a. ☐ POTENTIAL STRIKE b. ☐ ACTUAL STRIKE

E. DATE AND TIME OF RUNS STOPPAGE

4. IF STRIKE IS POTENTIAL HAS STRIKE VOTE BEEN TAKEN? ☐ YES ☐ NO

5A. NAME AND LOCAL NUMBER OF UNION

B. NAME AND TITLE OF KEY UNION REPRESENTATIVE CONTACTED

C. ADDRESS AND TELEPHONE NUMBER

6. AFFILIATION ☐ AFL-CIO ☐ OTHER (Specify)

7A. CAUSE OF DISPUTE AND ISSUES INVOLVED

B. WHERE APPROPRIATE EXPIRATION DATE OF COLLECTIVE BARGAINING AGREEMENT

8. TYPE OF STOPPAGE: ☐ AUTHORIZED STRIKE ☐ UNAUTHORIZED STRIKE ☐ LOCKOUT

9A. ESTIMATED NO. OF EMPLOYEES ON STRIKE

B. CLASSIFICATIONS (OR UNIT) INVOLVED

C. ESTIMATED NO. OF EMPLOYEES BY LOCATION

10A. ESTIMATED NO. OF EMPLOYEES AFFECTED

B. CLASSIFICATIONS (OR UNIT) INVOLVED WHERE APPROPRIATE

11A. HAVE PICKETS LINES BEEN ESTABLISHED? ☐ YES ☐ NO

B. EFFECT ON INGRESS AND EGRESS OF MATERIAL PERSONNEL

12. STATUS OF NEGOTIATIONS

13. PARTICIPATION BY FEDERAL MEDIATOR ☐ YES ☐ NO STATE MEDIATOR ☐ YES ☐ NO

14. FORECAST OF DURATION OF STOPPAGE

15. ACTION TAKEN BY CONTRACTOR TO MINIMIZE EFFECT OF DISPUTE ON GOVERNMENT CONTRACTS

16A. CONTRACT NUMBERS

B. FIXED PRICE

C. COST TYPE

17A. DESCRIPTION OF ITEMS READY OR NEARLY READY FOR SHIPMENT

B. POSSIBILITY OF SHIPMENT WITHOUT INCIDENT ☐ YES ☐ NO

18. FINAL REPORT ONLY

A. STRIKE SETTLEMENT DATE

B. IMPORTANT TERMS OF AGREEMENT

C. DATE OF RESUMPTION OF RUNS

D. MANDAYS LOST (Applicable only to Army Corps of Engineers' contracts and contracts involving Missile and Test Sites)

TYPED NAME AND SIGNATURE OF REPORTING OFFICIAL

DD FORM 1507

F-200.1507

ARMED SERVICES PROCUREMENT REGULATION

DEPARTMENT OF DEFENSE FORMS

F-200.1513 *DD Form 1513: United States Department of Defense Offer and Acceptance*

UNITED STATES DEPARTMENT OF DEFENSE
OFFER AND ACCEPTANCE

(1) PURCHASER (Name and Address) (Zip Code)

(2) PURCHASER'S REFERENCE

(3) CASE IDENTIFIER

OFFER

Pursuant to the Arms Export Control Act, the Government of the United States (USG) hereby offers to sell to the above purchaser, the defense articles and defense services listed below (hereinafter referred to collectively as "items", and individually as "defense articles" or "defense services"), subject to the terms contained herein and conditions set forth in Annex A, and to such other special terms and conditions which may be a part of and appended to, this Offer and Acceptance.

(4) Signature (U.S. Implementing Agency Authorized Representative)

(5) Typed Name and Title

(6) ADDRESS

(7) DATE

(8) THIS OFFER EXPIRES

(9) Countersignature (Officer of the Commander, DSAA) (Date)

(10) Typed Name and Title

(11) DSAA ACCOUNTING ACTIVITY

NOTE: This offer must be accepted not later than the date shown in block 8. Within five (5) days of its acceptance, you must notify the Office of the Comptroller, DSAA. Otherwise this Offer is cancelled and retention of initial deposit by offeror pending disposition instructions shall not be deemed a waiver of such cancellation. Request prompt notification if the offer is rejected.

ITEM NO.	ITEM DESCRIPTION (Including Nomenclature, Specification, etc.)	QUANTITY	UNIT OF ISSUE	ESTIMATED UNIT COST	ESTIMATED TOTAL COST	ESTIMATED REVENUE	ESTIMATED NO. OF DELIVERY TERM	ESTIMATED DELIVERY TERM

(21) ESTIMATED COST $

(22) ESTIMATED PACKING, CRATING, AND HANDLING COST $

(23) ESTIMATED GENERAL ADMINISTRATIVE COSTS $

(24) ESTIMATED CHARGES FOR SUPPLY SUPPORT ARRANGEMENT $

(25) OTHER ESTIMATED COSTS (Specify) $

(26) ESTIMATED TOTAL COSTS $

(27) TERMS

(28) AMOUNT OF INITIAL DEPOSIT $

ACCEPTANCE

(29) I am a duly authorized representative of the Government of _____ and upon behalf of said Government, accept this offer under the terms and conditions contained herein. (30) This _____ day of _____ 19____

(31) SIGNATURE

(32) TYPED NAME AND TITLE

(33) MARK FOR CODE

(34) FREIGHT FORWARDER CODE

(35) PROCURING AGENCY

(36) DESIGNATED PAYING OFFICE

(37) ADDRESS OF DESIGNATED PAYING OFFICE

DD FORM 1513 PREVIOUS EDITIONS MAY BE USED UNTIL EXHAUSTED PAGE 1 OF PAGES

F-200.1513

ARMED SERVICES PROCUREMENT REGULATION

F-200.1513 *DD Form 1513: United States Department of Defense Offer and Acceptance (Annex A)*

GENERAL CONDITIONS

Annex A

A. THE GOVERNMENT OF THE UNITED STATES

1. Agrees to furnish such items from its Department of Defense (hereinafter referred to as "DOD") stocks and resources, or to procure them under terms and conditions consistent with DOD regulations and procedures. When procuring for the Purchaser, the DOD shall, in general employ the same contract clauses, the same contract administration, and the same inspection procedures as would be used in procuring for itself, except as otherwise requested by the Purchaser and as agreed to by the DOD. Unless the purchaser has requested that a sole source contractor be designated and that Letter of Offer and Acceptance reflects acceptance of such designation by the DOD, the Purchaser understands that selection of the contractor source to fill this requirement is solely the responsibility of the Government of the United States (hereinafter referred to as "USG"). Further, the Purchaser agrees that the United States DoD is solely responsible for negotiating the terms and conditions of all contracts necessary to fulfill the requirements in the Letter of Offer

2. Advises that when the DOD procures for itself, its contracts include warranty clauses only on an exceptional basis. However the USG shall, with respect to items being procured and upon timely notice, attempt to the extent possible to obtain any particular or special contract provisions and warranties desired by the Purchaser. The USG further agrees to exercise, upon the Purchaser's request, any rights (including those arising under any warranties) the USG may have under any contract connected with the procurement of any items. Any additional cost resulting from obtaining special contract provisions or warranties, or the exercise of rights under such provisions or warranties, or any other rights that the USG may have under any contract connected with the procurement of items, shall be charged to the Purchaser

3a. Shall, unless the condition is otherwise specified herein (e.g., "As is"), repair or replace at no extra cost defense articles supplied from DOD stocks which are damaged or found to be defective in respect of material or workmanship, when it is established that those deficiencies existed prior to passage of title, or found to be defective in design to such a degree that the items cannot be used at all for the purpose for which they were designed. Qualified representatives of the USG and of the Purchaser, upon notification pursuant to paragraph B.6. below, shall agree on the liability of the USG hereunder and the corrective steps to be taken

b. With respect to items being procured for sale to the Purchaser the USG agrees to exercise warranties on behalf of the Purchaser pursuant to A.2. above to assure, to the extent provided by the warranty, replacement or correction of such items found to be defective.

c. In addition, the USG warrants the title of all items sold to the Purchaser hereunder. The USG, however, makes no warranties other than those specifically set forth herein. In particular the USG discloses any liability resulting from patent infringement occasioned by the use or manufacture by or for Purchaser outside the United States of items acquired hereunder

4. Agrees to deliver and pass title to the items to the Purchaser at the initial point of shipment unless otherwise specified in this Offer and Acceptance. With respect to defense articles procured for sale to the Purchaser this will normally be at the manufacturers' loading facilities, with respect to defense articles furnished from stocks this will normally be at the U.S. depot. Articles will be packed, crated or otherwise prepared for shipment prior to the time title passes. If "Point of Delivery" is specified otherwise than the initial point of shipment, the supplying Military Department or Defense Agency will arrange movement of the items to the authorized delivery point to reimbursable service but still pass title at the initial point of shipment; the USG disclaims any liability for damage or loss to the items incurred after passage of title irrespective of whether transportation is by common carrier or by the U.S. Defense Transportation System.

5. Advises that: a. Unless otherwise specified, USG standard items will be furnished without regard to make or model.

b. The price of items to be procured shall be at their total cost to the USG. Unless otherwise specified, the cost estimates of items to be procured, availability determination, payment schedule and delivery projections quoted are estimates based on current available data. The USG will use its best efforts to advise the Purchaser or its authorized representatives by DD Form 1513-2

(1) of any identifiable cost increase that might result in an increase in the "Estimated Total Costs" in excess of 10 percent,

(2) of any changes in the payment schedule(s) and

(3) of any delays which might significantly affect the estimated delivery dates:

but its failure to so advise of the above shall not affect the Purchaser's obligation under paragraphs B.1 and B.3 below

c. The USG will, however, use its best efforts to deliver items or render services for the amount and at the times quoted.

6. Under unusual and compelling circumstances when the national interest of the United States so requires, the USG reserves the right to cancel or suspend all or part of this Offer and Acceptance at any time prior to the delivery of defense articles or performance of services (including training). The USG shall be responsible for all termination costs of its suppliers resulting from cancellations or suspensions under this paragraph.

7. Shall refund to the Purchaser any payments received hereunder which prove to be in excess of the final total cost of delivery and performance of this Offer and Acceptance, and are not required to cover arrearages on other open Offers and Acceptances of the Purchaser.

8. Advises that personnel performing defense services provided under this Offer and Acceptance will not perform any duties of a combatant nature, including any duties relating to training, advising or otherwise providing assistance regarding combat activities, outside the United States in connection with the performance of these defense services.

9. Advises that in the assignment or employment of United States personnel for the performance of this Offer and Acceptance the USG will not take into account race, religion, national origin or sex.

10. Advises that notwithstanding Purchaser's agreement to pay interest on any net amount by which Purchaser may be in arrears on payments (as provided for in paragraph B.3.g. below) USG funds will not be used for disbursements by DOD to its contractors in the event of any such arrears in payments. Accordingly, failure by the Purchaser to make timely payments on the amounts due may result in delays in contract performance by DOD contractors, claims by contractors for increased costs (including the above mentioned interest costs) claims by contractors for termination liability for breach of contract or termination of contracts by the USG under this or other open Offers and Acceptances of the Purchaser at Purchaser's expense.

B. THE PURCHASER:

1. Shall pay to the USG the total cost to the USG of the items, even if the final total cost exceeds the amounts estimated in this Offer and Acceptance

2. Shall make payment(s) for the items by check(s) or by wire transfer payable in United States dollars to the Treasurer of the United States.

3a. Shall, if "Terms" specify "cash with acceptance", forward with this Offer and Acceptance a check or wire transfer in the full amount shown as the estimated total cost, and agrees to make such additional payment(s) as may be specified upon notification of cost increase(s) and request(s) for funds to cover such increases

b. Agrees if "Terms" specifies payment to be "cash prior to delivery" to pay to the USG such amounts at such times as may be specified from time to time by the USG (including any initial deposit set forth under "Terms") in order to meet payment requirements for articles or services to be furnished from the resources of the US Department of Defense. USG requests for funds may be based on estimated requirements to cover forecasted deliveries of articles or costs to provide defense services. It is USG policy to obtain funds 90 days in advance of the time DOD plans such deliveries or incurs such expenses on behalf of the Purchaser.

c. Agrees, if "Terms" specify payment by "dependable undertaking" to pay to the USG such amounts at such times as may be specified from time to time by the USG (including any initial deposit set forth under "Terms") in order to meet payments required by contracts under which items are being procured and any damages and costs that may accrue or have accrued, from termination of contracts by the USG, because of Purchaser's cancellation of this Offer and Acceptance under paragraph B.7. hereof. The requirement for funds may be based upon estimated requirements for advance and progress payments to suppliers, estimated termination liabilities, deliveries forecasts or evidence of constructive delivery as the case may be. It is USG policy to obtain such funds 90 days in advance of the time USG makes payments on behalf of the Purchaser.

d. Agrees, if "Terms" specify "payment on delivery" that bills may be dated as of the date(s) of delivery of the defense articles or rendering of the defense services, or upon forecasts of the date(s) thereof

e. Agrees, if "Terms" specify payment under a Credit Agreement between the Purchaser and DOD, to pay to the USG on a "dependable undertaking" basis, in accordance with B.3.c., above such costs as may be in excess of the amount funded by the Credit Agreement.

f. Agrees, that requests for funds or billings under paragraph B.3.a. through e. above are due and payable on full presentation, or, if a payment date is specified on the request for funds or bill, on the payment date so specified, even if such payment date is not in accord with the estimated payment schedule if any contained in this Offer and Acceptance. Without affecting Purchaser's obligation to make such payment(s) when due, documentation concerning advance and progress payments, estimated termination liabilities, or evidence of constructive delivery or shipment in support of request for funds or bills will be made available to the Purchaser by DOD upon request. When appropriate Purchaser will request adjustment of any quarterly billed items by subsequent submission of required discrepancy reports in accordance with paragraph B.6. below

g. Agrees to pay interest on any net amount by which it is in arrears on payments determined by considering collectively all of the Purchaser's open Offers and Acceptances with the DOD. Interest shall be calculated on a daily basis. The principal amount of the arrearage shall be computed as the excess of cumulative financial requirements of the Purchaser over total cumulative payments after quarterly billing payment due dates. The rate of interest paid shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the USG as of the last day of the month preceding the net arrearage, and shall be compound from the date of net arrearage.

F-200.1513 *DD Form 1513: United States Department of Defense Offer and Acceptance (Annex A)*—Continued

Annex A

h. Shall designate the Procuring Agency and responsible Paying Office, and address thereof to which the USG shall submit requests for funds and bills under this Offer and Acceptance

4. Shall furnish shipping instructions for the items with the acceptance of this Offer and Acceptance. Such instructions shall include (a) Offer/Release Code, (b) Freight Forwarder Code, and (c) the Mark for Code, as applicable.

5. Shall be responsible for obtaining the appropriate insurance coverage and customs clearances, and, except for items exported by the USG, appropriate export licenses.

6. Shall accept title to the defense articles at the initial point of shipment (see A.4. above). Purchaser shall be responsible for internal accounting and settlement of claims against common carriers. Title to defense articles transported by parcel post/mail pass to the Purchaser on date of parcel post shipment. Standard form 364 shall be used in submitting claims to the USG for overage, shortage, damage, duplicate billing, item deficiencies, or improper documentation and shall be submitted by Purchaser promptly. Claims of $100.00 or less will not be reported for overages, shortages, or damages. Claims received after one year from date of title or billing, whichever is later, will be disallowed by the USG, unless the USG determines that unusual and compelling circumstances involving latent defects justify consideration of the claim.

7. May cancel this Offer and Acceptance with respect to any or all of the items listed in this Offer and Acceptance at any time prior to the delivery of defense articles or performance of services (including training). It shall be responsible for all costs resulting from cancellation under this paragraph.

8. Shall, except as may otherwise be mutually agreed in writing, use the items sold hereunder only

a. For the purposes specified in the Mutual Defense Assistance Agreement, if any, between the USG and the Purchaser,

b. For the purposes specified in any bilateral or regional defense treaty to which the USG and the Purchaser are both parties, if subparagraph a. of this paragraph is inapplicable, or

c. For internal security, individual self-defense, and/or civic action, if subparagraphs a. and b. of this paragraph are inapplicable.

9. Shall not transfer title to, or possession of, the defense articles, components and associated support material related training or other defense services (including any plans, specifications or information) furnished under this Offer and Acceptance to anyone not an officer, employee or agent of the Purchaser (including transportation agencies) and shall not use or permit their use for purposes other than those authorized by B.8. above, unless the written consent of the USG has first been obtained. To the extent that any items, plans, specifications, or information furnished in connection with this Offer and Acceptance may be classified by the USG for security purposes, the Purchaser shall maintain a similar classification and employ all measures necessary to preserve such security, equivalent to those employed by the USG, throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the Purchaser if the classification is changed. The Purchaser will ensure, by all means available to it, respect for proprietary rights in any defense article and any plans, specifications, or information furnished, whether patented or not.

C. INDEMNIFICATION AND ASSUMPTION OF RISKS

1. It is understood by the Purchaser that the USG, in procuring and furnishing the items specified in this Offer and Acceptance does so on a nonprofit basis for the benefit of the Purchaser. The Purchaser therefore undertakes, subject to A.3. above, to indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss or liability (whether in tort or in contract) which might arise in connection with this Offer and Acceptance because of: (a) injury to or death of personnel of Purchaser or third parties, (b) damage to or destruction of (A) property of the DOD furnished to Purchaser or suppliers specifically to implement this Offer and Acceptance, (B) property of Purchaser (including the items ordered by Purchaser pursuant to this Offer and Acceptance, before or after passage of title to Purchaser) or (C) property of third parties or (b) patent infringement.

2. Subject to an express, special contractual warranties obtained for the Purchaser in accordance with A.2. above, the Purchaser agrees to relieve the contractors and subcontractors of the USG from liabilities for, and will assume the risk of, loss or damage to: (a) Purchaser's property (including the items procured pursuant to this Offer and Acceptance, before or after passage of title to Purchaser) and (b) property of the DOD furnished to suppliers specifically to implement this Offer and Acceptance, to the same extent that USG would assume for its property if it were procuring for itself the item or items procured pursuant to this Offer and Acceptance

D. ACCEPTANCE:

1. To accept this Offer and Acceptance the Purchaser will not later than the expiration date of the Offer and Acceptance as set forth herein, return three copies properly signed to the security assistance accounting center designated herein, accompanied by such initial deposit or other payment as may be required by the Terms herein. In addition Purchaser will concurrently return three copies properly signed to the U.S. Military Department or Defense Agency making the offer. When properly accepted and returned as specified herein the provisions of this Offer and Acceptance shall be binding upon the USG and the Purchaser.

2. It is understood that implementation of the Offer and Acceptance cannot proceed without a proper acceptance. Failure to comply with Terms and Conditions required for acceptance, as for example delay in submission of an required initial deposit or payment of full estimated cost, as the case may be, may require resaleit or reissue of the Offer and Acceptance.

3. Unless a written request for extension is made by the Purchaser and granted in writing by an authorized representative of the appropriate U.S. Military Department or Defense Agency, this Offer and Acceptance shall terminate on the expiration date set forth herein.

E. ENCLOSURES

Enclosures attached hereto are by this reference incorporated herein and are made a part hereof as though set forth in full

F. PUBLIC INSPECTION

This Offer and Acceptance will be made available for public inspection to the fullest extent possible consistent with the national security of the United States

EXPLANATORY NOTES

1. The item or reference numbers appearing in the "ITEM OR REF NO" column may not correspond with references used in Purchasers' original request. However, this number, together with the case identifier shown should always be used as a reference in future correspondence

2. Availability headline quoted is the estimated number of months required to complete delivery of the item(s) in accordance with the terms of delivery after receipt of acceptance of this Offer pursuant to Section D of the Conditions, and the installment or appropriate financial arrangements. Phased deliveries are shown by quantity and headline for each increment, where applicable. Items for which delivery headline is not shown are noted in column headed "Item Description" as items to be installed on the applicable end item prior to shipment

3. The planned source of supply for each item is expressed in the following codes

S	(*)	Service Stocks
P	(*)	Procurement
M	(*)	Rebuild/Repair/Modification
X	(*)	Stock and procurement (e.g., initial repair parts)
I	(*)	"Mimes" major items in long supply or excess

*Availability is stated in months.

4. Condition of the defense articles shown in the "AVAILABILITY AND REMARKS" column is expressed in the following codes

AI	Items to be provided in existing condition without repair, restoration or rehabilitation which may be required. Conditions indicated in item description
AI	Articles of mixed condition (new, remanufactured and rehabilitated) may be commingled when issued. Example: repair parts, ammunition set assemblies, kits, tool sets and shop sets.
H	Serviceable defense articles
O	Obsolete or nonstandard items or an "AS IS" condition for which repair parts support may not be available from DOD
S	Substitute, Suitable substitutions may be shipped for unavailable defense articles unless otherwise advised by the Purchaser
T	Remanufactured or rehabilitated defense articles possessing minimal appearance modification, including all modifications in Work Orders and Engineering Changes (Mods) as applied to such defense articles which would not be considered as having had total refurbishment of worn parts and/or assemblies. Used parts and components not meeting US Armed Forces serviceability tolerances and standards will have been replaced in all instances such defense articles will meet US Armed Forces standards of serviceability.

5. Training notes

AP	Annual Training Plan, an
SP	Special Training designed to support purchase of Equipment
NC	This offer does not constitute a commitment to provide US training
OC	US Training enhancements being addressed in separate Offer and Acceptance
NE	Not Training requested in support of this offer

6. Est shipment of delivery under see Military Assistance Program Address Directory (MAAD)

7. The use of Offer/Release Codes "N" and "Z" will incur a storage fee of .125% per month for shipment delays exceeding 45 days

F-200.1524 *DD Form 1524: Pre-Award Survey of Offeror — General*

PRE-AWARD SURVEY OF OFFEROR GENERAL

1. SERIAL NO. (For CAO Use Only) — FORM APPROVED OMB NO. 22-R0363

SECTION I - REQUEST - By Purchasing Office

2. NAME AND ADDRESS OF SURVEYING ACTIVITY
3a. SOLICITATION NO
3b. TOTAL OFFERED PRICE
3c. TYPE OF CONTRACT
4. NAME AND ADDRESS OF OFFEROR
(Offeror represents that he ☐ is ☐ is not a small business concern.)
5. PLANT AND LOCATION (If different from Item 4)
6. NAME, TITLE AND PHONE (Area code and number) OF FIRM'S CONTACT FOR SURVEY
WALSH-HEALEY PUBLIC CONTRACTS ACT (See ASPR Section 12, Part 8) ☐ IS NOT APPLICABLE OR ☐ IS APPLICABLE AND OFFEROR REPRESENTS HIS CLASSIFICATION AS (Check one) ☐ MANUFACTURER ☐ REGULAR DEALER ☐ OTHER (Specify)
7. REQUESTING ACTIVITY - BUYER'S NAME AND PHONE NUMBER (Include autovon, DATS/FTS, if available)
8. DATE OF REQUEST
9. DATE REPORT TO BE RETURNED
10. SURVEY SHALL BE ☐ COMPLETE ☐ PARTIAL

SECTION II - DATA (By Purchasing Office)

ITEM NO. A	FEDERAL STOCK NO. AND NOMENCLATURE B		TOTAL QUANTITY C	UNIT PRICE D	DELIVERY SCHEDULE E	F	G	H	I
		SOLICITED							
		OFFERED							
		SOLICITED							
		OFFERED							
		SOLICITED							
		OFFERED							

SECTION III - FACTORS TO BE INVESTIGATED AND INVESTIGATION RESULTS
(Column a for purchasing office use, columns b and c for contract administration use)

FACTORS	CHK A	SAT B	UNSAT C	FACTORS	CHK A	SAT B	UNSAT C
1. TECHNICAL CAPABILITY				8. TRANSPORTATION			
2. PRODUCTION CAPABILITY				9. PLANT SAFETY			
3. PLANT FACILITIES AND EQUIPMENT				10. SECURITY CLEARANCE			
4. FINANCIAL CAPABILITY				11. LABOR RESOURCE			
5. PURCHASING AND SUBCONTRACTING				12. PERFORMANCE RECORD			
6. ACCOUNTING SYSTEM				13. ABILITY TO MEET REQUIRED SCHEDULE			
7. QUALITY ASSURANCE CAPABILITY				14. OTHER (Explain in Remarks)			

PROVIDE A NARRATIVE EXPLANATION SUBSTANTIATING EACH ENTRY IN SECTION III, COLUMNS B AND C ABOVE.

REMARKS

OFFEROR ☐ HAS ☐ HAS NOT REQUESTED FINANCIAL ASSISTANCE FROM THE GOVERNMENT.

SECTION IV - CONTRACT ADMINISTRATION OFFICE RECOMMENDATION

1. RECOMMEND ☐ COMPLETE AWARD ☐ PARTIAL AWARD (Quantity _____) ☐ NO AWARD
2. APPROVAL — DATE — PHONE NO
(Chairman, Pre-Award Survey Board)

DD Form 1524 1 APR 73 PREVIOUS EDITION IS OBSOLETE.

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DLA8SY XX	DCASPRO, GTE Sylvania 189 B Street Needham, MA 02194
DLA8TE XZ	DCASPRO, Texas Instruments PO Box 6016, MS 256 Dallas, TX 75222
DLA8TO U3	DCASPRO, Douglas/Rockwell 2000 North Memorial Drive Tulsa, OK 74115
DLA8VC YC	DCASMA, Van Nuys 6230 Van Nuys Blvd. Van Nuys, CA 91403
DLA8WK YD	DCASMA, Wichita Wichita Mid-Continent Airport Terminal Bldg. Wichita, KS 67209
DLA8WS YE	DCASPRO, Westinghouse Hendy Avenue Sunnyvale, CA 94088
DLA8WT Z8	DCASPRO, Grumman Aerospace Corp. Stuart, FL 33494

APPENDIX N — ACTIVITY ADDRESS NUMBERS

DEFENSE CIVIL PREPAREDNESS AGENCY

DCPA01	Procurement Services Division Defense Civil Preparedness Agency Washington, DC 20301

DEFENSE MAPPING AGENCY

DMA600	Defense Mapping Agency Bldg. 56, U.S. Naval Observatory Washington, DC 20305
DMA650	Defense Mapping Agency Inter-American Geodetic Survey Drawer 934 Fort Clayton, Republic of Panama
DMA700	Defense Mapping Agency Aerospace Center 8900 South Broadway St. Louis, MO 63125
DMA800 YZ	Defense Mapping Agency Hydrographic/Topographic Center 6500 Brooks Lane Washington, DC 20315
DMA920	Defense Mapping Agency Depot Clearfield, UT 84016

ARMED SERVICES PROCUREMENT REGULATION

[FR Doc. 81-20563 Filed 7-13-81; 8:45 am]
BILLING CODE 3810-70-C

32 CFR Parts 1 through 39

[DAC 76-26]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-26. Some of the changes include: options; use of recovered material; value engineering; equal employment compliance; price reasonableness; field pricing reports on contract price proposals; procurement management reporting system; advance payments; and uniform contract format.

EFFECTIVE DATE: December 15, 1980.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3D1028, Pentagon, Washington, D.C. 20301, Telephone 202-697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations. The July 1, 1979 revision, as supplemented on July 1, 1980, is the most recent edition of that title. It reflects amendments to the 1976 edition made by Circulars 76-1 through 76-23.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the Regulation would be published in the **Federal Register.**

Defense Acquisition Circular 76-26.

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-26, issued December 15, 1980. The following is a summary of the amendments:

Options. DAR 1-1502 is revised to provide coverage concerning contracts for services which include prepriced options or renewal options for outyears. This coverage is designed to guard against "buy-in" pricing; to help insure needed continuity of operation; to allow for the possibility for contractor amortization of costs when the contractor is required to provide equipment or facilities; and to reduce turbulence in the contractor's work force.

Use of Recovered Material. DAR 1-2500.5 is revised to eliminate the requirement for a specified minimum percentage of recovered material to be used in the production of the item offered for sale to the Government.

Value Engineering. As a result of review of the coverage on Value Engineering in an effort to simplify and clarify the coverage, extensive revisions to Section I, Part 17, and related clauses in Section VII are included in this DAC.

Equal Employment Compliance. DAR 7-2003.14(b)(3) is deleted as a result of a decision by the United States Circuit Court of Appeals, Seventh Circuit, which found the provision in that paragraph to be invalid. Related changes to 2-201, 3-501 and 12-805, resulting from the deletion, are included in this DAC.

Price Reasonableness. The material in 3-604.1 with respect to considering the reasonableness of price on small purchase awards under $500 has been rearranged to more accurately state the DAR requirements on this point. Specifically, although no formal determination or documentation of reasonableness is required in such awards, the contracting officer must conclude in some manner that the price is reasonable.

Field Pricing Reports on Contract Price Proposals. The dollar threshold limitation for field pricing support in DAR 3-801.5 is increased from $250,000 to $500,000 for cost-reimbursement, cost-sharing, cost-plus-award-fee, and cost-plus-fixed-fee type contracts. In addition, other types of contract proposals are specifically cited along with their respective dollar thresholds. A revision to the waiver concept is also included in this section. Also, DAR 3-811 is revised to clarify the transmission of the price negotiation memorandum in situations where field pricing support was furnished.

DD Form 254. Changes to DAR Sections VII, XVI and Appendix F have been made to incorporate the January 1, 1978 revision of the DD Form 254.

Deliveries of Excess Quantities of Supplies. Delivery of material by Department of Defense contractors exceeding the contract requirements has resulted in unnecessary administrative costs to the Government in determining the disposition of such material. This is particularly applicable in the case of small dollar value over-shipments. To reduce the administrative costs in such instances, the clause entitled "Delivery of Excess Quantities of $100 or Less" is added to the DAR in 7-104.103. This clause will allow the Government to retain excess quantities of material up to $100 without compensating the contractor.

Accounting for Termination Costs. In response to a recommendation from the Cost Accounting Standards Board, DAR 15-205.42 is revised to require the establishment of separate cost accounts to accommodate and identify significant expenses. Reference to the revised cost principle is added to 8-203 and 8-205.

Cost Accounting Standard 416, Accounting for Insurance Costs. DAR Section X, Parts 3 and 5, and 15-205.16 are revised to incorporate the provisions of Cost Accounting Standard 416.

Common Carrier Freight Rates. DAR Section XIX is revised to incorporate the appropriate references to the Revised Interstate Commerce Act. In addition, changes are made to Section XIX to incorporate shipment requirements related to Foreign Military Sales.

Procurement Management Reporting System. DAR Section XXI, Parts 1 and 2 are extensively revised to incorporate new or revised Department of Defense requirements and the provisions of the Federal Procurement Data System. Among the more notable changes are (i) the requirement for use of the Data Universal Numbering System (DUNS) in DAR 21-112.1; and (ii) a clarification of the reporting of the extent of competition in negotiated acquisitions, in 21-126. Revised coverage also includes a solicitation provision requesting the offeror to supply his DUNS number with his offer. Related changes to Sections II and III with respect to this provision are included in this DAC. Copies of revised Forms 350 and 1057 are included in Appendix F.

Advance Payments. The changes to DAR Appendix E, Part 6, and 7-104.32 affect the interest rate to be charged on advance payments and incorporate language into Appendix E to formalize the "no bank account" advance payment procedures.

Excluded Advance Payments. Due to the rising costs caused by worldwide inflation, the dollar thresholds for exclusions in Appendix E-419 are raised from $2,500 to $10,000 and from $300 to $500, respectively.

Uniform Contract Format. Copies of revised Standard Forms 18 and 26, containing the revised Table of Contents, are included in Appendix F.

Editorial Changes. Editorial changes are included in this DAC to correct typographical and printing errors, and inconsistencies in previously published material.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533(a) and (d). The amendments became effective on December 15, 1980.

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–26. The number at the top of each page (for example, 1:25) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the July 1, 1979 edition of the Defense Acquisition Regulation contained in 32 CFR Parts 1–39, Volumes I, II and III, as supplemented on July 1, 1980, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table:

DAR paragraph	Replacement pages
Volume I	
1-304.3	1:25.
1-339	1:77-A.
1-1502	1:196, 1:197.
1-1700	1:201.
1-1701	1:201, 1:202, 1:203.
1-1702	1:203.
1-1703	1:203, 1:204.
1-1704	1:204.
1-1704.1	1:204.
1-1704.2	1:204.
1-1704.3	1:204.
1-1704.4	1:205.
1-1704.5	1:205.
1-1704.6	1:205.
1-1705	1:205.
1-1706	1:205.
1-1706.1	1:205, 1:206, 1:206-A.
1-1706.2	1:206-B
1-1707	1:206-B.
1-2500.5	1:233.
2-201	2:8, 2:11, 2:17, 2:17-A.
3-501	3:61, 3:65, 3:66, 3:66-B, 3:69, 3:70.
3-604.1	3:79.
3-608.2	3:92, 3:93.
3-801.5	3:112 through 3:114-A.
3-811	3:157.
Volume II	
7-104.2	7:30, 7:31.
7-104.12	7:52.
7-104.34	7:76-A, 7:77, 7:78-A, 7:78-B, 7:80, 7:80-A, 7:81.
7-104.44	7:94 through 7:103, 7:105.
7-104.64	7:116.
7-104.103	7:140-D.
7-108.1	7:157.
7-602.50	7:297 through 7:297-B, 7:298.
7-2003.12	7:500.
7-2003.13	7:500.
7-2003.14	7:502.
7-2003.15	7:502-B.
7-2003.16	7:503.
7-2003.17	7:503.
7-2003.18	7:503.
7-2003.19	7:504.
7-2003.20	7:505.
7-2003.21	7:506.
7-2003.23	7:507, 7:508.
7-2003.24	7:508, 7:509.
7-2003.29	7:510.
7-2003.39	7:513.
7-2003.40	7:513.
7-2003.41	7:513.
7-2003.66	7:522.
7-2003.68	7:524-B.
7-2003.69	7:524-B.
7-2003.80	7:526-C.
7-2003.81	7:526-C.
7-2003.90	7:526-E.
8-203	8:6.
8-205	8:8.
8-309	8:28.
10-301	10:17.
10-301.1	10:17.
10-301.2	10:17.
10-301.3	10:17.
10-302	10:17, 10:17-A.
10-303	10:17-A, 10:17-B, 10:17-C.
10-304	10:17-C.
10-305	10:17-C.
10-306	10:17-C.
10-403	10:19.
10-501.1	10:22, 10:23.
10-502	10:24.
10-503	10:24.
10-504	10:24.
10-505	10:24.
12-805	12:29.
15-205.16	15:26 through 15:27-A.
15-205.42	15:46.
Volume III	
16-811	16:45, 16:46.
19-217	19:14.
19-217.1	19:14.
19-402	19:17, 19:18.
21-000	21:1.
21-100	21:2.
21-101	21:2.
21-102	21:2 through 21:4, 21:5.
21-103	21:5, 21:6.
21-105	21:6.
21-111	21:8.
21-111.1	21:8.
21-112.1	21:8-A, 21:8-B.
21-113	21:8-B.
21-113.3	21:9.
21-114	21:9.
21-115	21:9, 21:10.
21-115.1	21:10.
21-115.2	21:10.
21-115.3	21:10.
21-116	21:10, 21:12.
21-118	21:12.
21-119	21:12.
21-120	21:13.
21-121	21:14.
21-122	21:14, 21:15.
21-123	21:15 through 21:27.
21-126	21:19 through 21:21.
21-130	21:22.
21-132	21:22-A.
21-133	21:22-A.
21-134	21:23.
21-135	21:23.
21-136	21:23.
21-137	21:23.
21-138	21:23.
21-139	21:23.
21-140	21:23.
21-201	21:24.
21-202	21:25.
21-204	21:25-A.
21-204.2	21:25-A.
21-206	21:25-B
21-208	21:25-B, 21:25-C.
21-209	21:25-C.
21-210	21:25-C
21-211	21:25-C
E-403	E:30, E:31.
E-404	E:31.
E-407	E:32-A
E-410	E:33, E:34.
E-411	E:35.
E-413	E:36, E:36-A.
E-413.1	E:36-A, E:37.
E-414.1	E:38.
E-416	E:40.
E-419	E:41.
F-100.18	F2, F3.
F-100.26	F26
F-100.149	F57.
F-200.254	F83. F84.
F-200.254c (deleted)	F85, F86 (removed)
F-200.350	F91
F-200.1057	F196.

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tory additional sources will require, in addition to data, technical assistance from the primary source, consideration should be given to the use of the leader company procurement technique (see Section IV, Part 7).

(4) As a last alternative, a design specification may be developed by the Government through inspection and analysis of the product (*i.e.*, reverse engineering), and used for competitive procurement. Reverse engineering shall not be used unless significant cost savings can be reasonably demonstrated and the action is authorized by the Head of the Procuring Activity. In the case of the Air Force this authority may be delegated to the Commanders of the Air Force Systems Command Divisions and Centers and the Air Force Logistics Command Air Logistics Centers.

1-304.3 *Purchase of Patented Items When Government is a Licensee.* Award of a contract shall not be refused to a bidder/offeror merely because he is not the owner of or a licensee under any patent involved in the procurement. If, at the time a solicitation is issued, the Government is obligated to pay royalties applicable to the proposed procurement because of a pre-existing license agreement between the Government and a patent owner, the solicitation shall so state and shall: (i) identify the patents and specify the royalty rate; and (ii) advise that an amount equal to the royalty which the Government will be required to pay under the license agreement will be added as an evaluation factor to each bid/offer unless the bidder/offeror includes in his bid/offer a statement that he is the owner of or a licensee under the patents. (See 2-201(a)Sec.K(ix) and Sec.M(i); 2-201(b)(xvi) and (xxviii); 3-501(b)Sec.K(xvii) and Sec.M(x); and 3-501(c)(xliv).)

1-305 Time of Delivery or Performance.

1-305.1 *Scope.* This paragraph prescribes policy and procedure regarding requirements as to time of delivery or performance of contracts for supplies or services, excluding construction.

1-305.2 *General.*

(a) The time of delivery or performance is an essential element for inclusion in a contract and must be clearly set forth in invitations for bids and requests for proposals. Delivery and performance schedules shall be designed to meet the requirements of the particular procurement, with due regard to all relevant factors, and must be realistic. Delivery and performance schedules which are unreasonably tight or difficult of attainment are inimical to full competition, inconsistent with small business policies (see 1-702(b)(vi)), and may result in higher contract prices. Therefore, prior to issuing an invitation for bids or request for proposals, the contracting officer shall question any delivery requirement which appears unrealistic, and, if necessary, initiate action to make appropriate adjustments, with due attention to relevant factors such as applicable transportation factors (see Section XIX) and those listed below:

(i) urgency of need for the supplies or services;
(ii) production time (quantity, complexity of design, etc.);
(iii) market conditions;
(iv) transportation time;
(v) industry practices;
(vi) capabilities of small business concerns;
(vii) time for obtaining and evaluating bids or offers, and awarding contracts;

(viii) time for contractors to comply with any conditions precedent to contract performance; and
(ix) time for the Government to perform its obligations under the contract (*e.g.*, furnishing Government property to the contractor, approval of preproduction samples, and inspection).

(b) When timely delivery or performance is unusually important to the Government, liquidated damages provisions may be used as provided in 1-310.

(c) Invitations for bids and requests for proposals shall, except where clearly unnecessary, inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

1-305.3 *Terms.*

(a) Delivery schedules may be expressed in terms of—
(i) specific calendar dates (*e.g.*, on or before 68 Jul 01);
(ii) specified periods from date of contract (*i.e.*, date of award or acceptance by the Government, or date shown on contract document as effective date of contract); or
(iii) specified periods from date of receipt by contractor of notice of award or acceptance by the Government (including notice by receipt of contract document executed by the Government).

The full period which the Government holds out as being available for contract performance should not be curtailed to the prejudice of the contractor by delay in giving notice of award. The clauses in 7-104.92 provide for extending the delivery schedule when notice of award is delayed.

(b) When the delivery schedule is based on the date of the contract (see (a)(ii) above and 7-104.92(b) and (c)), the contract, notice of award, acceptance of proposal, or other contract document executed by the Government shall be mailed or otherwise furnished the contractor on the day it is dated.

(c) When the delivery schedule is based on date of receipt by the contractor of notice of award (see (a)(iii) above), or when it is expressed in terms of specific calendar dates on the assumption that notice of award will be received by a specified date (see 7-104.92(d)(ii)), the notice of award, acceptance of proposal, or other contract document executed by the Government shall be sent by certified mail, return receipt requested, or shall be accompanied with a date of receipt acknowledgment card in accordance with Departmental procedures.

(d) When the *required* delivery schedule in the invitation for bids is based on date of the contract (see (a)(ii) above), a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (see (a)(iii) above)—
(i) shall be evaluated by adding five days normally required for delivery of the award through the ordinary mails; and
(ii) if the delivery date offered by the bid (computed in accordance with (i) above) is later than the delivery date required in the invitation for bids, the bid shall be considered nonresponsive and rejected; but
(iii) if award is made under (i) above, under the terms of the contract the delivery date will be the number of days, after *actual* receipt by the contractor of the notice of award, which were specified in the bid.

1-305.4 *Time of Delivery Clauses.*

Examples of time of delivery clauses for invitations for bids are set forth in 7-104.92.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36497

perty. The rule stated in 1-336.3 also applies to the use of underlying air carriers by international air freight forwarders engaged in such foreign air transportation.

(b) In order that bills submitted by international air freight forwarders engaged in international air transportation may be paid upon presentation, such carriers shall submit with their bills a copy of the airway bill or manifest showing the underlying air carriers utilized with such justification certifications as they may have for the use of underlying non-certificated air carriers. Use of the prescribed certification satisfies the justification requirement.

1-337 Should Cost. Should cost is a concept of contract pricing that employs an integrated team of Government procurement, contract administration, audit and engineering representatives to conduct a coordinated, indepth cost analysis at the contractor's plant. The purpose is (i) to identify uneconomical or inefficient practices in the contractor's management and operations and to quantify the findings in terms of their impact on cost, and (ii) to develop a realistic price objective which reflects reasonably achievable economies and efficiencies. A should cost review will be made in connection with the procurement of a system or item which will require a DSARC approval, unless the contracting officer makes written determination that the potential savings to be realized do not justify the expense of such a should cost review. Such determination shall be included in the Procurement Plan (see 1-2100). Should cost reviews should also be considered in procurements when: there are future year production requirements for substantial quantities of like items; there has already been some initial production; the competitive forces are insufficient to ensure economical and efficient performance (*e.g.*, sole source); the specification is comparatively definitive and not likely to be changed; and the present and potential value of the work to be performed is substantial.

1-338 Design to Cost.

(a) Cost is a contract parameter equal in importance with technical, delivery and performance requirements throughout the design, development, production and operation of defense systems, subsystems, components and equipments. Design to cost is a concept which recognizes this principle by requiring the establishment of cost elements as management goals to achieve the best balance between life cycle cost, acceptable performance, and schedule. Cost, under this concept, is a design parameter during design and development, and a management discipline throughout the acquisition and operation of the system or equipment. Policies and procedures for the application of design to cost are contained in DODD 5000.28.

(b) The principles of design to cost shall be applied in all procurements for Major Defense Systems (DODD 5000.1) unless exempted by the Secretary of Defense. Design to cost principles shall also be applied to the acquisition of systems, subsystems, and components below the thresholds for Major Defense Systems, to the extent prescribed in DODD 5000.28, and in accordance with Departmental procedures.

(c) Design to cost considerations are essential elements of sound procurement planning under 1-2100. Such planning shall include the establishment of design to cost objectives and goals and determinations of how they are to be applied, tracked, and enforced. To be effective, the design to cost approach should

be planned at the inception of the program, should encompass all phases of the program, and should be kept current by regular reviews both at appropriate intervals and at program milestones.

(d) In solicitations and contracts including design to cost principles, consideration should be given to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DODD 4105.62). This is to facilitate product development at the lowest life cycle cost consistent with mandatory schedule and performance requirements.

(e) For the relationship of design to cost to value engineering, see 1-1707.

1-339 Energy Conservation.

(a) The Energy Policy and Conservation Act requires that Federal procurement policies governing requirements determinations and source selection decisions provide for consideration of (i) conservation of energy and (ii) the relative energy efficiency of alternative goods or services capable of satisfying the Government's needs.

(b) The energy conservation and energy efficiency criteria shall be applied in the determination of requirements and source selection decisions whenever the application of such criteria would be meaningful, practical, and consistent with agency programs and operational needs. Under this policy, energy conservation and efficiency criteria shall be considered for application along with price and other relevant factors in the preparation of solicitations, the evaluation of offers, and the selection of bids and proposals for award.

(c) With respect to the procurement of consumer products, executive agencies shall take cognizance of energy use / efficiency labels and prescribed energy efficiency standards as they become available.

1-340 Geographic Distribution of Department of Defense Subcontract Dollars. Section 836 of the 1978 DoD Appropriation Act requires DoD to render an annual report to Congress on the geographical distribution of DoD subcontract dollars. To implement this requirement, the clause in 7-104.78 shall be inserted in any contract to be awarded which is expected to exceed $500,000, or when any modification increases the aggregate amount of a contract to $500,000 or more. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to such a modification.

1-341 Prohibition Against Inflationary Acquisition Practices.

(a) *Authority.* Executive Order 12092, November 1, 1978 (43 F.R. 51375, November 3, 1978), requires that acquisition of personal property and services by executive agencies and military departments be accomplished at prices and wage rates which are noninflationary.

(b) *Acquisition Policy.* The Government will purchase goods and services, to the extent provided in (d) below, only from companies, as companies are defined by the published standards of the Council on Wage and Price Stability (CWPS), in compliance with wage and price standards reflected in Executive Order 12092 of November 1, 1978, and the Wage and

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

projects, or to similar projects under the auspices of the Department of Defense where the recipient nation pays for or furnishes at least fifty percent of the transportation, in which event foreign-flag vessels may be used for not to exceed fifty percent of the gross tonnage for the project. The contracting officer shall comply with 1-1402(ii) relative to any Government-owned construction materials requiring ocean transportation.

1-1410 Reserved.

Part 15—Options

1-1500 Scope of Part. This Part applies to contracts for supplies and services other than for (i) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property and (ii) research and development. It does not preclude the inclusion of appropriate options in such construction and research and development contracts.

1-1501 Definition. As used in this Part, an option is a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional quantities of the supplies or services called for by the contract, or may elect to extend the period of performance of the contract.

1-1502 Applicability.

(a) Option clauses may be included in contracts if increased requirements within the period of contract performance are foreseeable, or if continuing performance beyond the original period of contract performance may be in the best interest of the Government. Because options require offerors to guarantee prices for definite periods of time with no assurance that the options will be exercised, their improper inclusion could result in prices which are unfair to either the Government or the contractor. Therefore, an option clause normally should not be included if it can reasonably be foreseen that (i) minimum economic production quantities will be required at some future date, and (ii) startup costs, production lead time, and probable delivery requirements would not preclude adequate future competition.

(b) Option clauses shall not be included in contracts, and option provisions shall not be included in solicitations, if:

(i) the supplies being purchased are readily available on the open market;

(ii) the contractor would be required to incur undue risks (*e.g.*, the price or availability of necessary materials or labor is not reasonably foreseeable);

(iii) an indefinite quantity contract or requirements contract is appropriate except that options for continuing performance may be used in such contracts;

(iv) market prices for the supplies involved are likely to change substantially; or

(v) the option quantities represent known firm requirements for which funds are available unless (A) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, and (B) realistic competition for the option quantity is impracticable once the initial contract is awarded.

(c) In recognition of (i) the Government's need in certain service contracts for continuity of operation and (ii) the potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period, but see 1-322.

(d) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award pursuant to 1-1504.

In unusual circumstances, solicitations may require that option quantities be offered at prices no higher than those for the initial quantities. Such circumstances may exist, for example, when (i) the option cannot be evaluated pursuant to 1-1504(c) or (d) because additional requirements are foreseeable but not known, and (ii) realistic competition for the option quantity is impracticable once the initial contract is awarded. However, because such limitations as to option prices tend to cause a "frontloading" of costs on the basic quantity which are transferred from the option quantity to equalize the prices offered, their improper inclusion could result in prices which are unfair to the Government should the options not be exercised. Therefore, the procedures in 1-1503(d) shall be followed.

(e) The total of the basic and option periods shall not exceed five years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for five years in the case of supplies. This five year limitation shall not apply to Automatic Data Processing Equipment acquisitions; however, the basic and option periods shall not exceed the approved systems life as defined in the Federal Property Management Regulations.

1-1503 Procedures.

(a) If a contract is to contain an option clause, the solicitation must contain an appropriate option provision. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option but with respect to service contracts may extend beyond the contract completion date when exercise of the option would obligate funds not available in the fiscal year in which the contract would otherwise be completed. In fixing the period within which the option may be exercised, consideration shall be given to (i) necessary lead time in order to assure continuous production and (ii) the time required for additional funding and other necessary approval action. The period specified for exercising the option shall in all cases be kept to a minimum. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented by the contracting officer in the contract file. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option.

(b) If exercise of the option would result in increased quantities of supplies, the option may be expressed in terms of (i) percentage of specific contract line items, (ii) a number of additional units of specific contract line items, or (iii) additional numbered line items identified as the option quantity with the same nomenclature as line items initially included in the contract. If exercise of the option would result in an increase in the performance of services by the contractor, the option may similarly be expressed in terms of percentages, increase in specific line items, or additional numbered line items, expressed in terms of the units of work initially used in the contract such as man hours, man years, square feet, pounds or tons handled. If exercise of the option would result in an extension of duration of the contract, the option may be expressed in terms of an extended terminal date or of an additional time period, such as days, weeks, or months.

(c) Solicitations which allow the offer of option quantities at unit prices which differ from the unit prices for the basic contract quantities shall also state that varying prices may be offered for the option quantities depending on the quantities actually ordered and the date or dates when ordered. However, if the

solicitation contains an *Evaluation of Options* provision pursuant to 1-1504, it shall also specify the price at which the options will be evaluated (*e.g.*, highest option price offered or option price for specified quantities or dates).

(d) If a solicitation is to require the offering of option quantities at prices no higher than those for the initial quantities pursuant to 1-1502(c), then:

(i) the inclusion of such limitation as to option price shall be justified and documented by the contracting officer in the contract file;

(ii) the solicitation shall also include a conspicuous notice adjacent to such limitation as to option price cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; and

(iii) if the option is for additional quantities of supplies, an option quantity shall not exceed 50% of the initial quantity of the same contract line item or of the line item with the same nomenclature; *provided*, however, that in unusual circumstances a greater percentage of quantity may be approved in writing by the Chief of the Purchasing Office.

(e) When it is anticipated that the Government may exercise an option to fulfill Foreign Military Sales requirements, the solicitation shall notify contractors of the Government's intent in this regard and shall identify the Foreign Military Sales requirements. The contract shall contain an additional paragraph in the option provision substantially as set forth in 7-104.27(d) which provides for the Government's right to exercise the option for Foreign Military Sales purposes (see 6-1309).

1-1504 Evaluation.

(a) Except as otherwise provided in this paragraph, solicitations containing option provisions shall state that evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity.

(b) If it is anticipated that the Government may exercise the option at time of award, the solicitation shall include an *Evaluation of Options* provision substantially as set forth in 7-2003.11(a).

(c) The option quantity may be considered in the evaluation for award of a firm fixed-price contract, a fixed-price contract with economic price adjustment provisions, or such other types of contracts as may be approved by Departmental procedures, if, before issuance of the solicitation, it has been determined by the Chief of the Purchasing Office that:

(i) there is a known requirement which exceeds the basic quantity to be awarded, but either (A) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, or (B) due to the unavailability of funds, the option cannot be exercised at the time of award of the basic quantity; *provided* that in this latter case there is reasonable certainty that funds will be available thereafter to permit exercise of the option; and

(ii) realistic competition for the option quantity is impracticable once the initial contract is awarded and hence it is in the best interests of the Government to evaluate options in order to eliminate the possi-

Part 17—Value Engineering

1-1700 Value Engineering (VE).

1-1701 Definitions.

(a) Acquisition savings means savings resulting from the application of value engineering change proposals (VECPs) to contracts awarded by the same contracting office for essentially the same unit. Acquisition savings include:

(i) Instant contract savings which are the net cost reductions on the contract under which the VECP was submitted and accepted and which are equal to the unit cost reduction multiplied by the number of units affected by the VECP, less the contractor's allowable development and implementation costs (on service contracts, the unit cost reduction is multiplied by the labor-hour rate agreed upon for the tasks involved; then the contractor's allowable development and implementation costs are subtracted from the total);

(ii) Concurrent contract savings, which are measurable net reductions in the prices of other contracts of the contracting office in existence at the time the VECP was accepted; and

(iii) Future contract savings, which are the product of the unit cost reduction under the instant contract, adjusted to consider the effects of learning, quantities, or other similar factors, multiplied by the number of units scheduled for delivery during the sharing period. If the instant contract is a multiyear contract, future contract savings include savings on all quantities funded after VECP acceptance.

(b) Collateral costs means agency costs of operation, maintenance, logistic support, or Government-furnished property.

(c) Collateral savings means those measurable net reductions resulting from the VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

(d) Contractor's development and implementation costs means those costs which the contractor incurred specifically in its development, testing, preparation, and submission of the VECP, as well as its costs to make the contractual changes required by Government acceptance of a VECP.

(e) Government costs means those agency costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistics support. They do not include the normal administrative costs of processing the VECP.

(f) Instant contract means the contract under which the VECP is submitted. It does not include increases in quantities after approval of the VECP due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, it does not include quantities funded after VECP approval. In a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

(g) Negative instant contract savings means that the acceptance of the VECP results in:

(i) a reduction in the instant contract of the actual unit cost;

(ii) an excess of contractor's development and implementation costs as compared to the unit cost reduction multiplied by the number of units affected; and

(iii) a consequent equitable adjustment increasing the instant contract price.

These savings are not a Government cost.

(h) Net acquisition savings means acquisition savings less Government costs.

(i) Sharing period means that period that extends to the 3 years after acceptance of the first item incorporating the VECP, or the delivery schedule in effect for all affected end items on the instant contract when the VECP is accepted, whichever is longer.

(j) Unit means the item or task to which the parties agree the VECP shall apply.

(k) Unit cost reduction means the amount of the decrease in unit cost of performance (without deducting any development or implementation costs and, for future contracts, with adjustments for learning, change in quantities, or other similar factors as necessary) resulting from using the VECP. On service contracts, the unit cost reduction is equal to the costs per hour multiplied by the number of hours per line item task saved by the VECP.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36561

(1) Value engineering change proposal (VECP) means a proposal that:

(i) requires a change to the instant contract to implement; and

(ii) results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, *provided* That it does not involve a change:

(A) in deliverable quantities only;

(B) in R&D quantities or test quantities due solely to results of previous testing under the instant contract; or

(C) to the contract type only.

1-1702 General.

(a) Value engineering is the formal method by which contractors may (i) suggest contract changes which would reduce the overall cost to the Government and share in any resulting savings, or (ii) be required to establish a program to identify and submit to the Government methods of reducing costs to the Government through contract changes. Value engineering is concerned with eliminating nonessential functions or components of end-items or tasks which contribute to the cost of their being acquired, operated, or logistically supported.

(b) There are two basic value engineering (VE) approaches: (i) an incentive program in which contractor participation is voluntary, and (ii) a mandatory program in which the Government requires and pays for a specific VE program effort. In the first, contractors are responsible for developing and submitting VECPs using their own resources. The contract provides payment for these costs if a VECP is accepted. Use of the voluntary approach should not in itself increase costs to the Government. Under the second approach, the contractor must perform a VE effort of the scope and level of effort required by the Government's program plan and included as a separately priced item of work in the contract schedule. The objective of this VE program requirement is to ensure that the contractor's VE effort is applied to areas of the contract that offer opportunities for considerable savings consistent with the functional requirements of the end item of the contract.

1-1703 Policy.

(a) The Government shall provide contractors with a substantive financial incentive to develop and submit VECPs.

(b) The Government shall provide contractors with (i) objective and expeditious processing of VECPs submitted and (ii) a fair share of the savings on accepted VECPs.

(c) Subcontractors shall be encouraged to submit VECPs through incorporation of VE clauses in appropriate subcontracts.

(d) Value engineering incentive payments do not constitute profit or fee within the meaning of the limitations imposed by 10 U.S.C. 2306(d). (See 3-405.6(c)(2).)

1-1704 Clauses.

1-1704.1 *Value Engineering Clause.* The contracting officer shall include the Value Engineering Clause in 7-104.44 in every supply or service contract of $100,000 or more. The clause may be included in supply or service contracts of lesser value if the contracting officer sees a potential for significant savings. If the contracting officer chooses to use a VE clause in a contract under $100,000, the appropriate clause referred to in 1-1704.1 through 1-1704.6 shall be used. Unless authorized by the chief of the contracting office, the contracting officer shall not include the clause in the following contracts:

(i) research and development other than full-scale engineering development;

(ii) engineering services from not-for-profit organizations, architect-engineer services, and personal services;

(iii) product or component improvement unless the VE clause application is restricted to areas not covered by provisions for product or component improvement; or

(iv) standard commercial items that do not involve any special requirements and specifications (such as packaging specifications).

1-1704.2 *Value Engineering, Alternate I.* The contracting officer may require a mandatory VE effort by using the clause in 7-104.44, as changed by Alternate I, in any supply or service contract when the contracting officer considers that substantial savings to the Government may result. The VE program requirements may be specified by the Government in the solicitation or, in the case of negotiated contracting, proposed by the contractor as part of the proposal and included as a subject for negotiation.

1-1704.3 *Value Engineering, Alternate II.* If the contracting officer determines that both a VE incentive and mandatory program requirement are appropriate, the contracting officer shall include in the supply or service contract the clause in 7-104.44, as changed by Alternate II. The contracting officer shall restrict the VE program requirement in the contract schedule to well-defined areas of performance. The clause applies a VE program to the specified areas and a VE incentive to the remaining areas of the contract.

1-1704.4 *Value Engineering, Alternate III.* When the head of the contracting activity determines the cost of computing and tracking collateral savings will exceed the benefits to be derived, the contracting officer shall include in the contract the clause in 7-104.44, as changed by Alternate III.

1-1704.5 *Value Engineering, Alternate IV.* The contracting officer may include a mandatory VE program requirement in an architect-engineer contract. However, no VE sharing provisions shall be included. The contracting officer shall use the clause in 7-104.44, as changed by Alternate IV.

1-1704.6 *Value Engineering Incentive--Construction Clause.* The contracting officer shall include the clause in 7-602.50, Value Engineering Incentive--Construction, in all fixed-price and cost-reimbursement construction contracts of $100,000 or more, other than incentive contracts. The clause may be included in fixed-price or cost-reimbursement construction contracts under $100,000 if the contracting officer sees a potential for significant savings. The contracting officer shall not include the clause in incentive-type construction contracts.

1-1705 Processing VECPs.

(a) The contracting officer shall provide the contractor prompt written notification if (i) the VECP evaluation period will exceed 45 days after receipt of the VECP by the Government (the notification shall include the estimated decision date and the reasons for the additional time required), or (ii) the VECP is not accepted (the notification shall explain the reasons for nonacceptance).

(b) The contracting officer shall cite the Value Engineering clause (see 1-1704) when modifying the contract to incorporate a VECP or when making any VE-related change.

(c) The Government's decision to accept or reject a VECP; the Government's decision as to which of the sharing rates apply when the clause in 7-104.44, as changed by Alternate II, is used; and the Government's computation of collateral costs or collateral savings are not subject to the Disputes clause.

1-1706 Sharing Arrangements. The two types of savings shared by the Government and the contractor as a result of accepted VECPs are acquisition savings and collateral savings.

1-1706.1 *Sharing of Acquisition Savings.*

(a) The sharing base for acquisition savings is the number of affected end items on contracts of the contracting office approving the VECP. The Head of the Contracting Activity (HCA) may extend the sharing base from the contracting office throughout the activity if the HCA determines in writing that it would

be more equitable or would significantly increase the contractor's incentive. The sharing base may be further expanded by the Secretary concerned. The sharing rates (Government/contractor) for acquisition savings for supplies and services are based on the type of contract, the Value Engineering clause, and the type of savings as follows:

	Incentive (Voluntary)		Program Requirement (Mandatory)	
TYPE OF CONTRACT	Instant	Concurrent and Future	Instant	Concurrent and Future
Fixed-Price (Other than Incentive)	50/50	50/50	75/25	75/25
Incentive (Fixed-Price or Cost)	*	50/50	*	75/25
Cost-Reimbursement** (Other than Incentive)	75/25	75/25	85/15	85/15

* Same ratio as the contract's cost incentive ratio.
** Includes cost-plus-award-fee contracts.

(b) Sharing on construction contracts applies only to savings on the instant contract. The sharing rates (Government/contractor) are as follows:

Fixed-Price*	45/55
Cost-Reimbursement*	75/25

* Other than incentive

(c) The contractor shall share in the savings on all affected units until the originally scheduled delivery date of the last affected unit under the instant contract or for 3 years after acceptance of the first unit incorporating the VECP, whichever is longer. For engineering development and low rate initial production contracts, the future sharing

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

period shall encompass scheduled deliveries, equal in number to the quantity required over the highest 36 consecutive months of planned production, based on the Five Year Defense Program (FYDP) or other planning documentation at the time the VECP is accepted. Savings are paid through the contract under which the VECP was accepted. Within 3 months after concurrent contracts have been modified to reflect price reductions attributable to use of the VECP, the contracting officer shall modify the instant contract to provide the contractor's share of savings. On incentive contracts, the contractor's share of concurrent, future, and collateral savings shall be paid as a separate firm fixed-price contract line item on the instant contract. The contractor shall be responsible for maintaining, for 3 years after final payment on the contract under which the VECP was accepted, records adequately identifying the first delivered unit incorporating the applicable VECP.

(d) The contractor's share of future contract savings may be paid as subsequent contracts are awarded or in a lump-sum payment at the time the VECP is accepted. The contracting officer ordinarily shall make calculations as future contracts are awarded and, within 3 months after their award, modify the instant contract to provide the contractor's share of savings. Use of the lump-sum method must be agreed to by the contractor. For future acquisition savings calculated under the optional lump-sum method, the sharing base is an estimate of the number of items which will be purchased by the contracting office during the sharing period. In deciding to use the more convenient lump-sum method for an individual VECP, the contracting officer shall consider:

(i) the accuracy with which the number of items to be purchased during the sharing period can be estimated and the probability of actual production of the projected quantity;

(ii) the availability of funds for a lump-sum payment; and

(iii) the administrative expense of otherwise amending the instant contract as future contracts are awarded.

(e) The contractor's profit or fee shall be excluded when calculating the net savings on instant and future contracts.

(f) Departments shall establish procedures for funding and payment of the contractor's share of future savings.

1-1706.2 *Sharing of Collateral Savings.* The contractor's share of collateral savings is 20% of the estimated savings to be realized during an average year of use but shall not exceed (i) the contract's firm fixed-price, target price, target cost, or estimated cost at the time the VECP is accepted; or (ii) $100,000, whichever is greater.

1-1707 Relationship to Other Incentives. The Government shall offer the fullest possible range of motivation to contractors while precluding duplication of incentives. Those benefits of an approved VECP not rewardable under performance, design-to-cost, or similar incentives of the contract shall be rewarded under a Value Engineering clause. The targets of such incentives affected by the VECP shall not be adjusted because of the acceptance of the VECP.

Part 25 - Recovered Material

1-2500 Recovered Material.

1-2500.1 Scope. This part prescribes policies and procedures regarding the use of recovered materials.

1-2500.2 Policy. The policy of the Government is to obtain items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

1-2500.3 General. Basic policy is provided in the Solid Waste Disposal Act (Public Law 89-272, October 20, 1965; 42 U.S.C. 3251 et. seq.) as amended by the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, October 21, 1976; 42 U.S.C. 6901 et. seq.), and the Office of Federal Procurement Policy Letter Number 77-1. The legislation requires Executive Agencies responsible for drafting or reviewing specifications to assure that Government specifications and standards (i) do not exclude the use of recovered materials, (ii) do not require the item to be manufactured from virgin materials, and (iii) require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item. It also requires the Administrator, Environmental Protection Agency (EPA), to prepare guidelines setting forth information on the availability, sources, and potential uses of recovered materials and associated items, including solid waste management services and recovered materials to be used as fuel.

1-2500.4 Definition. "Recovered material" means material which has been collected or recovered from solid waste.

1-2500.5 Procedures.

(a) These procedures are applicable to all acquisitions using Government specifications which require incorporation of recovered materials.

(b) Solicitations which incorporate Government specifications requiring utilization of recovered materials shall include the certification in 7-2003.82.

(c) Requirements in Government specifications for use of recovered materials may be waived by the contracting officer only after a determination that the items (i) are not available within a reasonable period of time, (ii) fail to meet performance standards set forth in specifications, or (iii) are available only at unreasonable prices.

(xviii) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 (Geographic Distribution of Defense Subcontract Dollars).
(xix) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-103.10, 7-104.3, 7-104.32, and 7-104.106, as prescribed by 6-104.5 and 6-803.1(e).

Part II—General Provisions

SECTION I - General Provisions.
(i) such general contract provisions (contract clauses) as required by law and by this Regulation;
(ii) such additional general provisions as may be applicable to the acquisition; and
(iii) such alterations to contract provisions as are appropriate.

Part III—List of Documents, Exhibits, and Other Attachments

SECTION J - List of Documents, Exhibits, and Other Attachments.
(i) Here list all of the documents, exhibits, and other attachments that make up the invitation-for-bids package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example, work frequency schedules, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the invitation proper).

Part IV—General Instructions

SECTION K - Representations, Certifications, and Other Statements of Bidder.
(i) Standard Form 33, Part 2 (Representations and Certifications);
(ii) when considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid the provision in 7-2003.12 concerning his affiliation with other concerns shall be included in this Section K. Failure to furnish the affidavit with the bid shall be treated as a minor informality or irregularity (see 2-405);
(iii) the clause in 7-2003.13 that provides for a preference for labor surplus area concerns shall be

included in invitations for bids that do not involve set-asides for labor surplus area concerns;

(iv) when needed for the purpose of bid evaluation, preaward surveys, or inspection, a requirement that all bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. When it is reasonably anticipated that producing facilities will be used in the performance of the contracts, or when Government requires the information, bidders will be required to state (A) the full address of principal producing facilities (if designation of address is not feasible, a full explanation will be required), and (B) names and addresses of owner and operator if other than bidder;

(v) if the contract is for the Military Assistance Program, include the certificate in 7-2003.50;

(vi) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, include the certificate in 7-2003.47;

(vii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, include the provisions in 7-2003.14(b)(1) and (2);

(viii) any requirement for prior testing and qualification of a product, when the item to be acquired is on a qualified products list (see Section 1, Part 11);

(ix) when the contract is for the acquisition of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(x) when shipping weights and dimensions are required to evaluate offers as to transportation costs (see 19-210), a provision substantially as in 7-2003.16 shall be included in the solicitation, except that the paragraph relating to the Government's estimated weights and dimensions may be omitted when such estimates cannot reasonably be developed and the file is documented accordingly, prior to the issuance of the solicitation. Solicitations omitting the paragraph relating to the Government's estimated weights and dimensions shall state that the failure to furnish guaranteed shipping weights and dimensions will render offers nonresponsive, unless the contracting offer determines that the shipping weights and dimensions would clearly not affect the standing of the bids. To aid in computing a reduction when the contractor exceeds the guaranteed maximum(s), the award document will show the weight(s) and dimensions used in the evaluation;

(B) include in Section L of the solicitation a provision substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Offerors allowing less than the number of calendar days specified in the "Offer" portion of SF 33 for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xviii) when the contract is to contain a first article approval clause, the statement required by 1-1903;

(xix) any applicable notices of small business or labor surplus area set-asides (see 1-706.6 and 1-804.2);

(xx) the applicable small business size standard and product classification (see 1-701 and 1-703);

(xxi) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3) (see, for example, 13-202(b));

(xxii) the provision in 7-2003.10 when a "brand name or equal" item is being acquired;

(xxiii) in unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being acquired, or for some other special reason, a statement of such qualifications;

(xxiv) if the solicitation is to include an Industrial Preparedness Production Planning line item, the provision in 7-2003.69 will be included (see 1-2206);

(xxv) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;

(xxvi) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.

(xxvii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(xxviii) Reserved;

(xxix) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

SECTION M - Evaluation Factors for Award.

(i) a statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provisions for economic price adjustment as factors for evaluation.

(The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.

(ii) if the solicitation contains an economic price adjustment clause, the provision in 7-2003.23(a);

(iii) when the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see 2-407.5(iii)), the provision in 7-2003.23(b);

(iv) discount provision (see 2-407.3);

(v) when bids (or proposals) are to be solicited f.o.b. origin only and when requirement exists for transit arrangements at transit point(s) in the United States (excluding Alaska and Hawaii) (see 19-206(a)), the provision in 7-2003.23(c);

(vi) to establish the means the Government will use in f.o.b. origin solicitations in applying transportation costs for evaluation (see 19-208.2(c)), the provision in 7-2003.23(d) (which may be modified to accommodate other methods of transportation);

(vii) when the exact destination is not known (see 19-208.4(a)), the provision in 7-2003.24(a);

(viii) when the exact destination is not known (see 19-208.4(a)), or when f.o.b. origin contracts may result (see 19-209), the provision in 7-2003.24(b);

(ix) when the supplies may be purchased f.o.b. origin (see 19-212), the provision in 7-2003.24(c);

(x) when both f.o.b. origin and f.o.b. destination bids are desired (see 19-104.2(b)), the provision in 7-2003.24(d);

(xi) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services, that required by 22-502 for mortuary services, that required by 22-600.3 and 22-600.4 for the preparation of personal property for shipment or storage and the performance of intra-area movement);

(xii) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;

(lvii) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*");

(lviii) insert the Woman-Owned Business representation in 7-2003.80;

(lix) insert the Percent Foreign Content representation in 7-2003.81;

(lx) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82;

(lxi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(lxii) Reserved;

(lxiii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(c) Master Solicitation. A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DOD. The document is pre-positioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(1) The master solicitation shall not be used unless repetitive purchases are anticipated.

(2) The master solicitation shall not include non-essential or infrequently used provisions.

(3) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of DAR clauses. The master solicitation shall not include Section VII clauses; however, where the acquisition requires performance outside the U.S., Section VII clauses may be included in the master solicitation.

(4) Copies of a master solicitation shall be made available upon request.

(5) There shall be no interim changes, revisions nor amendments to the master solicitation itself. The only approved method of revising the master solicitation shall be by reissuing the entire master solicitation.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36587

(6) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(7) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result. Approval by the Head of the Contracting Activity is required.

2-202 Miscellaneous Rules for Solicitation of Bids.

2-202.1 *Bidding Time.*

(a) Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids. As a general rule, bidding time shall be no less than 30 calendar days. For potential sources in participating countries, see 6-1403.1(a); for sources in FMS/offset arrangement countries, see 6-1310.3(b); and for sources in defense cooperation countries, see 6-1502.1.

(b) This rule need not be observed in special circumstances; for example, where the contracting officer has valid reason to determine that bidders in the second step of two-step formal advertising can prepare and submit their bids in less than 30 calendar days, or where the urgency for the supplies or services does not permit such delay. When the contracting office is located in the United States and a prospective bidder is located at a foreign address, the mailing time associated with international air mail (see 2-203.1) shall be considered when establishing the bid opening date. For items on Qualified Products Lists, see 1-1107.1; for construction contracts, see 18-202(b), and for brand name or equal items, see 1-1206.2.

2-202.2 *Telegraphic Bids* As a general rule, telegraphic bids will not be authorized. However, when, in the judgment of the contracting officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the schedule of the invitation for bids will contain the provision in 7-2003.29.

2-202.3 *Bid Envelopes.* Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders. To provide for ready identification and proper handling of bids, Optional Form 17, "Sealed Bid Label", obtainable from the General Services Administration, may be furnished with each bid set to provide the bidder with a means of specifically identifying his bid.

2-202.4 *Bid Samples*

(a) *Definition* The term "*bid sample*" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. Such samples will be used only for the purpose of determining the responsiveness of the bid and will not be considered on the issue of a bidder's ability to produce the required items.

(b) *Policy* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure acquisition of an acceptable product. It may be appropriate to require bid samples, for example, where the acquisition is of products that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable

SECTION F - Deliveries or Performance.
(i) the time of delivery or performance (see 1-305);
(ii) place and method of delivery (see Section XIX);
(iii) when MILSTAMP procedures apply to shipments of supplies, a provision setting forth the obligations of the contractor under such procedures (see 19-101).

SECTION G - Contract Administration Data.
(i) accounting and appropriation data (Note: where SF 33 is used, include only data not set forth on that form);
(ii) instructions to paying offices and administrative contracting offices, including name, organization code, and telephone area code, number, and extension of contracting office representative.

SECTION H - Special Provisions.
(i) if the contract is to include option provisions, a clear statement of the provisions (see 1-1506);
(ii) if the contract is to include design-to-cost requirements, provisions in accordance with 1-338;
(iii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if the acceptance does not prejudice any other offeror (this may be placed elsewhere as long as the notice is adjacent to the limitation as to option price);
(iv) if the price negotiated is not predicated on allowability of the cost of money for facilities capital employed, the contract shall include a statement that: the cost of money for facilities capital (15-205.50) is unallowable.
(v) if the contract is to be conditioned on the availability of funds, include one of the clauses in 7-104.91;
(vi) if the contract is multiyear, the provisions required by 1-322.2(a), (b), or (f);
(vii) any progress payments provisions (see Appendix E);
(viii) any applicable Service Contract Act wage determinations of the Secretary of Labor (see Section XII, Part 10);
(ix) any special provisions relating to the Government's providing Government production and research property (see Section XIII, Part 3);
(x) when the clause in 7-104.62 is included in the contract and Appendix I, Table 2, does not list

addresses of the required special distribution recipients, the applicable names and addresses shall be included in this Section H. The contracting office issuing the contract shall reference the line item as necessary, the addresses of the status control activity/inventory manager, and, if applicable, the processing contracting office cited in the Military Interdepartmental Purchase Request (MIPR);
(xi) in accordance with 1-1208, the clause in 7-104.48 and the clause in 7-104.49;
(xii) if the contract is to contain the Safety Precautions for Ammunition and Explosives clause in 7-104.79, a specific list of any of the mandatory requirements of DoD Manual 4145.26-M that are being waived;
(xiii) when the contract is expected to contain requirements for provisioned items, include the information prescribed in 4-302.1;
(xiv) for acquisitions involving Military Assistance Program (MAP)(Grant Aid), include the MAP Record Control/Program/Directive Number identifier and special markings, if appropriate. For Foreign Military Sales (FMS) acquisitions, include the special markings, if appropriate, and specify the FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA. These identification entries are required to permit the contractor to comply with Appendix I-301, Block 16(12), and to facilitate collection of contract administration charges from foreign governments on FMS acquisitions.
(xv) if the contract is for supplies acquired for resale, include the clause in 7-104.88;
(xvi) if international air transportation of personnel and cargo is possible during performance of the contract, include the clause in 7-104.95;
(xvii) in accordance with 9-603(b), insert the Identification of Restricted Rights Computer Software provision in 7-2003.76;
(xviii) if the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2;
(xix) when the proposed contract is to require the contractor to prepare production progress reporting in accordance with the clause in 7-104.51, the contract schedule shall contain instructions as prescribed in 25-202; and
(xx) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 (Geographic Distribution of Defense Subcontract Dollars).

Part II—General Provisions

SECTION I - General Provisions.
(i) such general contract provisions (contract clauses) as are required by law or by this Regulation;

(iv) a statement requesting the prospective offeror or quoter to list the names and telephone numbers of persons authorized to conduct negotiations;
(v) where SF 33 (Solicitation, Offer, and Award) is not used, a statement that prospective offerors/quoters should indicate in the offer/quotation the address to which payment should be mailed, if such address is different from that shown for the offeror/quoter. (Contracting officers shall include this information in all resultant contracts that are to be administered by a Defense Contract Administration Services Regional Office);
(vi) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, the provisions in 7-2003.14(b)(1) and (2);
(vii) the clause in 7-2003.13 shall be included in Requests for Proposals that do not involve set-asides for labor surplus area concerns;
(viii) a requirement that the proposal or quotation state the intended place of performance, including the street address, and the names and addresses of owner and operator of producing facilities, if other than offeror or quoter, when it is reasonably anticipated that such facilities will be used in the performance of the contract;
(ix) if the contract is for the Military Assistance Program, the certificate in 7-2003.50;
(x) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, the certificate in 7-2003.47;
(xi) a request that prospective offerors or quoters state whether, to their knowledge, the contract performance involves the acquisition of Government production

and research property, the disposal of which may be restricted by patent or other rights (see 13-307(b));
(xii) when the delivery of technical data is required, insert the provision in 7-2003.66;
(xiii) the appropriate transportation solicitation provisions as required by 2-201(a) Section K (x) through (xiv);
(xiv) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);
(B) in accordance with 3-1204.1(a)(vii)(A), insert the provision in 7-2003.67(b);
(C) in accordance with 3-1204.1(b), insert the provision in 7-2003.67(c);
(D) in accordance with 3-1213(a), insert the provision in 7-2003.67(d);
(xv) any requirement for royalty information to be furnished with the offer of quotation (see 9-410(a));
(xvi) when neither SF 33 (Solicitation, Offer, and Award) nor SF 18 (Request for Quotations) is used, insert a requirement for inclusion of "country" as part of quoter's/offeror's address;
(xvii) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), insert the provision in 7-2003.15;
(xviii) when the proposed acquisition consists of a partial set-aside for LSA firms (1-706.7 or 1-804.1) or a partial set-aside for small business firms (1-706.6), include the clause in 7-2003.21;
(xix) the Clean Air and Water certification in 7-2003.71;
(xx) insert the Small Disadvantaged Business Concern representation in 7-2003.74;
(xxi) insert the Woman-Owned Business representation in 7-2003.80;
(xxii) insert the Percent Foreign Content representation in 7-2003.81;

SECTION L - Instructions and Conditions, and Notices to Offerors/Quoters.
(i) when SF 33 is used, it shall be accompanied by SF 33A (Solicitation Instructions and Conditions); alternatively, SF 33A may be incorporated by reference to the form name, number and edition date;
(ii) the Late Technical Proposals provision in 7-2002.3 or the Late Proposals provision in 7-2002.4 (these replace paragraphs 7 and 8 of SF 33A);
(iii) the Order of Precedence provision in 7-2003.41 (this replaces paragraph 19 of SF 33A);
(iv) type of contract contemplated, together with type of repricing, and economic price adjustment, if any;

(v) when telegraphic offers are authorized, a provision similar to that in 7-2003.29;
(vi) permission, if any, to submit alternate offers, including alternate materials or designs (see 1-1207);
(vii) if no award will be made for less than the full quantities solicited, a statement to that effect;
(viii) if award is to be made by specified groups of items or in the aggregate, a statement to that effect;
(ix) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provision in 7-2003.25;
(x) directions for obtaining copies of any documents, such as plans, drawings and specifications, that have been incorporated by reference (see 1-1203);
(xi) information as to requirements for a Certificate of Current Cost or Pricing Data (see 3-807);
(xii) any requirements for samples or descriptive literature (for definitions, see 2-202.4 and 2-202.5(a), respectively);
(xiii) when SF 33 is not used, consistent with 3-805.1(a)(v), notice to all offerors that award may be made without discussion of proposals;
(xiv) if the contract involves performance of services on a Government installation, the provision in 7-2003.39;
(xv) in accordance with 6-1104, the U.S.-owned foreign currency provision in 7-2003.62;
(xvi) solicitations that will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;
(xvii) when the contract is to contain a first article approval clause, the statement required by 1-1903;
(xviii) any applicable notices of small business or labor surplus area set-asides (see 1-706 and 1-804.2);
(xix) the applicable size standard and product classification (see 1-701 and 1-703);
(xx) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3);
(xxi) description of the procedures to be followed in obtaining permission to use Government production and research property (see Section XIII, Parts 4 and 5);

(xxii) the provision in 7-2003.40 concerning unnecessarily elaborate proposals;
(xxiii) the provision in 7-2003.10 (suitably modified for negotiation procedures) when a "brand name or equal" item is being acquired;
(xxiv) instructions regarding the marking of information that is not to be disclosed to the public or used by the Government for any purpose other than the evaluation of the proposals or quotations (see 3-507.1);
(xxv) instructions with respect to disposition of drawings and specifications supplied with the request for proposals or request for quotations;
(xxvi) statutory cost limitation, if any;
(xxvii) if the DD Form 1423 (Contract Data Requirements List) is used, a provision that if the offeror fails to enter the required information in Blocks 25 and 26 of DD Form 1423 in accordance with instructions on the form as part of his submission and refuses to do so on request, his offer may be rejected;
(xxviii) a statement covering special technical capabilities that the offeror must possess;
(xxix) a description of any information required to support proposed prices (subcontract structure, make-or-buy program, purchasing system, royalty, and cost and price information) (see Section III, Parts 8 and 9; Section IX, Part 1; and Section XXIII);
(xxx) in accordance with 7-2003.14(a), the notice of Preaward On Site Equal Opportunity Compliance Review set forth therein;
(xxxi) when Cost/Schedule Control Systems Criteria are required (see 1-331(h)), the provision in 7-2003.43 shall be included;
(xxxii) if the solicitation is to include an Industrial Preparedness production planning line item, the provision in 7-2003.68 shall be included;
(xxxiii) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;
(xxxiv) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;
(xxxv) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.
(xxxvi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(xxxvii) Reserved;
(xxxviii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36511

(xli) if pursuant to 1-1504, options are to be evaluated for award, the applicable *Evaluation of Options* provision shall be inserted;

(xlii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (This may be placed elsewhere so long as the notice is adjacent to the limitation as to option price.)

(xliii) any requirement for royalty information to be furnished with the offer, proposal or quotation (see 9-110(a));

(xliv) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xlv) a statement on the first sheet or on a cover sheet of the Request for Proposals that:

PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001.

(xlvi) a statement of arangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;

(xlvii) information which may affect performance of the work such as boring samples, original boring logs, etc.;

(xlviii) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any new utilities are adequate for the needs of both the Government and the contractor (see 7-603.30);

(xlix) Reserved;

(l) Reserved;

(li) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);

(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);

(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);

(lii) the *Late Technical Proposals* provision in 7-2002.3, or the Late Proposals provision in 7-2002.4, (these replace paragraphs 7 and 8 of SF 22);

(liii) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;

(liv) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;

(lv) the *Clean Air and Water Certification* in 7-2003.71;

(lvi) Reserved;

(lvii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72,

(lviii) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lix) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(lx) if the contract is expected to be $500,000 or more, include the clause in 7-104.78 ("*Geographic Distribution of Defense Subcontract Dollars*").

(lxi) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82.

(lxii) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-104.3, 7-104.32, 7-2003.47, and 7-104.106 as prescribed in 6-104.5, 6-803.1(e).

(lxiii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(lxiv) Reserved;

(lxv) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(d) *Oral Solicitations.*

(1) Oral solicitations are authorized for small purchases (see Section III, Part 6) and for the acquisition of perishable subsistence.

(2) Oral solicitations, other than those described in (1) above, are authorized in cases where the processing of a written solicitation would delay the furnishing of the supplies or services to the detriment of the Government. Examples of such circumstances may include those listed in 3-202.2. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. In addition to other applicable documentation requirements (see 1-308), the record of contract actions above shall include a resume of the circumstances that justified use of an oral solicitation, item description, quantity, deliveries required, sources solicited, prices quoted (including name of individual contacted), date and time contacted, and the solicitation number (see 20-203) provided the prospective sources. Should the issuance of the resulting contractual instrument be unduly delayed, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

(3) Use of oral solicitation does not relieve the contracting officer from complying with other applicable portions of this Regulation; e.g., the appropriate requirements of (b) above, postaward notice of offerors (see 3-508.3), price negotiation policies and techniques (Section III, Part 8), and submission of same terms and conditions to all offerors.

tive cost of verifying the reasonableness of the price of purchases not in excess of $500 may more than offset potential savings in detecting instances of overpricing; therefore, action to verify the reasonableness of the price need be taken only when the buyer or contracting officer suspects or has information (e.g., comparison to previous price paid, personal knowledge of the item involved) to indicate that the price may not be reasonable. In some cases, e.g., first buy of new items, action to verify may also be required to determine whether or not the price is reasonable.

3-604.2 *Purchases in Excess of $500.*

(a) Solicitation of quotations from a reasonable number of qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase. Generally, solicitation shall be limited to three suppliers and, to the maximum extent possible, shall be restricted to the local trade area of either the purchasing or the receiving activity. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. Quotations should generally be solicited orally except for construction contracts in excess of $2,000. Written solicitations should be used when (i) the suppliers are located outside the local area, (ii) special specifications are involved, (iii) a large number of line items are included in a single proposed procurement, or (iv) obtaining oral quotations is not considered economical or possible.

(b) Reasonableness of a proposed price should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file setting forth the basis of the determination of fair and reasonable price. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being procured, or any other means. Written records of solicitation may be limited to notes or abstracts to show vendor or vendors contacted, prices, delivery, and any other informal historical data. If a separate form is used for documentation of price reasonableness, DD Form 1784, Small Purchase Pricing Memorandum, shall be used (see 16-813). If this form is not used, the price reasonableness statement shall be based on one or more of the criteria set forth on the form. In any case, the con-

in 7-2003.50 and the clause in 7-2003.51 shall be inserted in the Schedule, and Clause 6 of the General Provisions (Foreign Supplies) deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(x) Reserved.

(xi) The clauses in 7-104.48 and 7-104.49 may be used in accordance with the provisions of 1-1208.

(xii) When the contract is for mortuary services:

(A) the following clauses shall be inserted in the Schedule—

(I) the Specification clause in 7-1201.4;
(II) the Delivery and Performance clause in 7-1201.7;
(III) the Subcontracting clause in 7-1201.8;
(IV) the Inspection clause in 7-1902.4;
(V) the Professional Requirements clause in 7-1201.11;
(VI) the Facility Requirements clause in 7-1201.12; and
(VII) the Preparation History clause in 7-1201.13;

(B) the Additional Default Provision clause in 7-1201.9 shall be inserted in the Schedule, with the following substitution for paragraph (a) and the first sentence of paragraph (b) of that clause:

(a) This clause supplements the "Termination for Default" clause of this contract.
(b) This contract may be terminated for default by written notice if during the performance of this contract:

(C) The Changes clause in 7-1902.2 shall be substituted for paragraph 17 of the Additional General Provisions on DD Form 1155r.

(xiii) *Reserved.*

(xiv) When required by 6-305, the clauses in 7-104.13 and 7-104.93 shall be added.

(xv) When required by Section XII, Part 10, the clause in 7-1903.41(a) or (b) shall be added.

(xvi) When required by 19-213.2, the clause in 7-104.74 shall be added.

(xvii) In accordance with 1-330, the clause in 7-104.45(a) or 7-1912 may be inserted.

(xviii) When the contract requires the use of a Government bill of lading or mailing indicia, the clause in 7-104.85 shall be added.

(xix) When a bid guarantee is required in accordance with 10-102, the clause in 7-2003.25 shall be included together with the instructions in 10-102.4.

(xx) When performance and payment bonds are required in accordance with 10-103, pertinent instructions with regard thereto shall be added.

(xxi) *Reserved.*

(xxii) When required by 12-302, the *Contract Work Hours and Safety Standards Act* clause in 7-103.16(a) shall be added.

(xxiii) When required by 7-1903.41(d), one of the Linen Supply Service Contract clauses therein shall be added.

(xxiv) When required by 10-405, the *Insurance* clause in 7-104.65 or 7-603.10 shall be added.

(xxv) When required by 1-706.5, the *Notice of Total Small Business Set-Aside* clause in 7-2003.2 shall be added.

(xxvi) The changes authorized by 16-402.2 shall be incorporated when construction procurements are negotiated in accordance with 18-302.

(xxvii) When required by 19-208.3(a), the clause in 7-104.76 shall be added.

(xxviii) When required by 1-2207.3(c)(l)(iii), the clause in 7-104.38 shall be added.

(xxix) When required by 1-2207.4(c)(1)(iii), the clause in 7-104.46 shall be added.

(xxx) When the contract covers the procurement of goods and services for MAP, IMET, and FMS, the clause in 7-104.97 shall be added.

(xxxi) When required by 12-1302(a), insert the clause in 7-103.28.

(xxxii) If the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2.

(xxxiii) When the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders, the clause in 7-104.60 shall be added. The clause may also be used, with appropriate modification, in contracts for other supplies under the circumstances specified in 7-104.60.

(xxxiv) In accordance with 12-807.1, insert the applicable clause in 7-103.18.

(xxxv) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA.

(xxxvi) The clause in 7-104.103 may be used in accordance with instructions therein.

(2) *Use as a Purchase Order of Not More than $10,000 Outside the United States, its Possessions, and Puerto Rico.* DD Form 1155 and 1155r-1, with executed contractor's acceptance when required, are authorized for negotiated purchases of not more than $10,000 when such purchases are for supplies and services procured and used outside the United States, its possessions, and Puerto Rico, *provided:*

(i) the procurement is unclassified;

(ii) no clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth in DD Form 1155r-1, are to be used, except that—

(A) either the standard foreign Disputes clauses in 7-103.12(b) or that clause as modified in accordance with 7-103.12(c) shall be inserted in the Schedule.

(B) When the contract is translated into another language, the Schedule shall contain the provision in 7-2003.44.

(D) A commercial warranty clause may be used in accordance with 1-324.4.

(E) When required by Section VI, Part 3, one of the clauses in 7-104.13 or 7-104.93(a) or (b) shall be added, and in purchases in excess of $2,500, the *Communist Areas* clause in 7-103.15 shall be inserted in the Schedule.

(F) The clause in 7-104.103 may be used in accordance with instructions therein.

The contracting officer may delete the Taxes clause from the DD Form 1155r-1 in purchases under $1,000 if he determines that the administrative burden of securing relief from such taxes would be out of proportion to the relief obtained, *provided*, that such clause shall be included in all contracts in support of NATO infrastructure programs involving the expenditures of funds under Section 503(b) of the Foreign Military Sales Act of 1968 (see 11-403.1(a)).

(c) *Solicitation and Evaluation of Quotations.*

(1) *General.* In using the purchase order method, competition shall be solicited in accordance with 3-604, and every effort shall be made to obtain prompt payment discounts. Written quotations may be solicited by Standard Form 18 (Request for Quotation), DD Form 1155 (Order for Supplies or Services/Request for Quotations), approved automated format, or teletype. When using the DD Form 1155 as a request for quotation, see 3-608.8 for guidance on specific entries required in certain blocks. When using a teletype as a request for quotation, general provisions applicable to the solicitation shall be incorporated by reference.

(2) *Evaluation of Quotations.* Quotations shall be evaluated inclusive of transportation charges from the shipping point of the supplier to the delivery destination. For orders exceeding $500, oral quotations shall be recorded directly on the purchase request, on an abstract sheet, or other appropriate work sheet. Except as provided under the unpriced purchase order method, quotations that are indefinite as to price or based on economic price adjustment or redetermination shall not be considered for award by the purchase order method.

(d) *Preparation and Issuance of Priced Purchase Orders.* All applicable blocks and spaces shall be completed with the required data pursuant to 3-608.8, including the following policy guidance:

(i) Supplies to be purchased will be identified in accordance with Section I, Part 12.

(ii) The quantity of supplies or services shall be specified. For bulk quantity items and those subject to shrinkage, evaporation, miscount, weight or footage variance, etc., a maximum allowable variation (normally not in excess of 10%) shall be specified in the order so that shipments in excess of the order quantity may be accepted if the reason for such excess comes within the Variation in Quantity clause of the order and the aggregate amount of the order does not exceed authorized limitations. The clause set forth in 1-325 will be used to express the permissible variation in quantity.

(iii) Purchase orders shall be issued on a fixed-price basis, except as otherwise provided under 3-608.3 and shall include any trade discounts and offered prompt payment discounts.

(iv) Inspection of small purchase shall be in accordance with 14–308. Orders generally will provide that inspection and acceptance will be at destination and source inspection should be specified only when required by 14–305.2(c). When inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material to assure expeditious payment of orders and to obtain prompt payment discounts, except where the fast payment procedure is authorized.

(v) F.O.B. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(vi) The block "Deliver to F.O.B. Point BY" shall contain a definite calendar date by which delivery of supplies or performance of services is required.

(vii) The contracting officer's signature on purchase orders shall be in accordance with 20–101. Facsimile signatures may be used in the production of purchase orders by automated methods.

(viii) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

(ix) Purchase orders for subscriptions or other charges for newspapers, magazines or other periodicals, or for other publications, for which advance payment is authorized shall contain the provision in 7–2003.45.

3–608.3 *Unpriced Purchase Order.*

(a) An unpriced purchase order is an order for supplies or services the price of which is not established at the time of issuance of the order. Contracting officers shall assure that suppliers receiving unpriced purchase orders are carefully selected.

(b) An unpriced purchase order may be used only when all of the following conditions are present:

(i) the transaction will not exceed $10,000;

(ii) it is impractical to obtain pricing in advance of issuance of the purchase order; and

(iii) the procurement is for:

(A) repairs to equipment requiring disassembly to determine the nature and extent of such repairs;

(B) sole source material for which cost cannot be readily established; or

(C) supplies or services where prices are known to be competitive but exact prices are not known.

(c) Unpriced purchase orders may be issued by using DD Form 1155 or written telecommunications media (see 3–608.10). A realistic monetary limitation, either for each line item or for the total order, shall be placed on the unpriced purchase order which shall be an obligation subject to adjustment when the firm

(ii) the preparation of independent estimates by competent technical personnel.

Occasionally, differences of opinion will exist not only on the reasonableness of cost projections but also on the accounting techniques on which they are based. In addition, it is normally not possible to negotiate a pricing result which is in strict accord with all of the opinions of all of the specialists, or even with the Government's pricing objective. Reasonable compromises are normally necessary and this fact must be understood by all members of the team. For all of these reasons audit reports or pricing recommendations by others must be considered to be advisory only. The contracting officer is responsible for the exercise of the requisite judgments and is solely responsible for the final pricing decision. When the contracting officer does not adopt audit or other specialist recommendations that have particular significance on the contract price, comments should be included in the record of the negotiation.

(e) Whenever it becomes apparent to the contracting officer that the negotiations will require the resolution of complex problems which involve items significant in amount, he shall request attendance by audit or other representatives at the negotiation meeting.

3–801.3 *Responsibility of Requirements and Other Logistics Personnel in Purchasing Offices.* Personnel other than the contracting officer, who determine type, quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable and exert a material effect upon prices. Failure to determine requirements in sufficient time to allow:

(i) a reasonable period for preparation of requests for proposals;

(ii) preparation of quotations by offerors;

(iii) contract negotiation and preparation; or

(iv) adequate manufacturing lead time,

causes delays in deliveries and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase prices or restrict desired competition.

3–801.4 *Responsibility of Pricing Personnel in Purchasing Office.*

(a) The contract pricing team available to support the PCO in the review and analysis of pricing proposals includes the price analyst, negotiator, buyer, project engineer, and liaison auditor at the purchasing office.

(b) The price analyst or negotiator supporting the contracting officer may be designated to develop a Government pricing objective prior to the negotiation. This includes the responsibility for determining the extent of advice required from other specialists, requesting, obtaining, and considering such advice, and for consolidating pricing data, including cost and price analyses, historical cost or pricing data, independent government cost estimates, economic analyses and the like. The advice and assistance of the price analyst/negotiator should always be obtained when complex pricing techniques are indicated, including the use of contract types involving the skillful balancing of price, cost and performance incentive arrangements. In many instances, he will be in the best position to conduct the price negotiation.

3-801.5 *Responsibility of Field Pricing Support Personnel.*

(a) *Field Pricing Support.* Field pricing support involves analysis of the contractor's price proposal by any or all of the field technical and professional specialists including, but not limited to, the Plant Rep/ACO; contract auditor; price analyst; quality assurance personnel, engineers; and legal and small business specialists. The Plant Rep/ACO is the team manager for all PCO requests for field pricing support. Therefore the PCO shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Representative (Plant Rep) for the Services and the Administrative Contracting Officer (ACO) for DCAS(DSA). However, there shall be no constraints on the lines of communication with the PCO/ACO and contract auditor interface.

(b) *Field Pricing Reports on Contract Price Proposals.*

(1) Prior to negotiation of a contract or modification resulting from a proposal in excess of $100,000 for firm fixed price and fixed price with provision for economic price adjustment, fixed price redeterminable (prospective), time and materials, or labor hour type of contract, interim and final price redetermination and settlement of incentive types; $250,000 for fixed price incentive, cost plus incentive fee or fixed price redeterminable (retroactive) type of contract; or $500,000 for cost reimbursement, cost sharing, cost plus award fee, or cost plus a fixed fee type of contract, when the price is based on cost or pricing data (3-807.3) submitted by the contractor, the contracting officer (PCO or ACO) or authorized representative shall request a field pricing report (which usually includes an audit review by the contract audit activity), unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. Whenever available data is considered adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination. Information of the type described in (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontracts items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or forecast overhead rates, prescribed in an existing advance agreement.

(vi) Current labor rates, overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours.

It should be borne in mind that no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.—to which the rates apply.

(2) Ordinarily, field pricing reports should not be requested for pre-award pricing actions below the threshold specified in 3-801.5(b)(1), except in instances such as a lack of knowledge of the particular contractor, sensitive conditions, or an inability to perform an acceptable degree of price or cost analysis, and thereby establish a reasonable pricing result. Before requesting field pricing support for lower dollar offers, the contracting officer should consider utilizing price or cost analysis techniques (3-807.2) or the information cited in paragraph (1)(i) through (vi) above to establish the reasonableness of the proposed price.

(3) The PCO shall forward the request to the Plant Rep/ACO (copy to the cognizant contract audit activity) clearly stipulating specific areas for which input is required and assigning a realistic deadline for receipt of the field pricing report. The request shall be accompanied by any information, including applicable portion of the RFP and the offeror's proposal, which would be useful in the evaluation of the proposal. In sole source procurements, when the contracting officer knows in advance that field pricing support will be required, he shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. In addition, he may require the contractor to provide copies of his proposal direct to the Plant Rep/ACO and auditor. In this event the PCO shall, as soon as possible after receipt of the contractor's proposal, identify those specific areas for which field pricing support is required.

(4) The Plant Rep/ACO, as well as the contract auditor, will be responsible for providing a complete and accurate field pricing report to the PCO. To accomplish this end the Plant Rep/ACO must:

(i) in concert with the auditor and in consideration of his workload, establish a deadline for the auditor's input, subject to date adjustments when considered necessary (adjustments will be coordinated by the Plant Rep/ACO with the PCO and the contract auditor);

(ii) identify areas for special consideration (these are areas in addition to those specified by the PCO);

(iii) arrange for exchanges of technical and audit information and coordination between the CAS and audit activities; and

(iv) be fully responsive to a request for technical information from the auditor.

(5) The contract auditor shall treat the copy of the PCO request as a signal to arrange for and begin the audit work. He must be fully responsive to the request of the Plant Rep/ACO and he must communicate to the Plant Rep/ACO any change in audit schedule which may be required. The scope and depth of the audit, subject to time constraints, is the responsibility of the contract auditor. In addition, specific requirements in the PCO request shall be accommodated. The dollar effect of technical input vital to the audit shall be computed by the contract auditor and included in his report. The auditor's completed report shall be sent to the Plant Rep/ACO for inclusion, without change, in the field pricing report to the PCO.

(6) When providing pricing support to the PCO, the Plant Rep/ACO has primary responsibility for consolidating and evaluating the findings of the pricing team members at the contract administration and contract audit offices and for the analysis of proposed prices in consideration of, but not limited to, such factors as the need for quantities and kinds of materials included in the proposal; the need for the number and kinds of man-hours; the need for special tooling and facilities; and the reasonableness of scrap and spoilage factors. These analyses by the Plant Rep/ACO and his team shall be based on their knowledge of such factors as production, quality assurance, engineering and manufacturing practices and techniques, and information as to plant capacity, scheduling, engineering and production "know-how," Government property, make or buy considerations, and industrial security, particularly as these relate to practices of the specific prospective contractor.

(7) The contract auditor is responsible for submission of information and advice, based on his analysis of the contractor's books and accounting records or other related data, as to the acceptability of the contractor's incurred and estimated costs. The auditor shall report any denial by the contractor of access to records or cost or pricing data which the auditor considers essential to the preparation of a satisfactory report. If the auditor believes that the contractor's estimating methods or accounting system are inadequate to produce valid support for the proposal or to permit satisfactory administration of the type of contract contemplated, this shall be stated in the audit report and concurrently made known to the contractor so that he may have the opportunity of presenting his views to the PCO and Plant Rep/ACO. When the PCO determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, he shall, with the advice of the contract auditor and the Plant Rep/ACO, assure that necessary corrective action is initiated prior to the award of such contract. The auditor is responsible for performing that part of reviews and cost analyses which requires access to the contractor's books and financial records supporting proposed cost or pricing data, regardless of the dollar amount involved. Only the auditor shall have general access to the books and financial records for this purpose. This does not preclude the PCO, the Plant Rep/ACO, or their technical representative from requesting any data from, or reviewing records of, the contractor (such as lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities.

(8) The efforts of all field pricing support team members are complementary, advisory and also offer an excellent check and balance of the various analyses imperative to the PCO's final pricing decision. Therefore it is essential that there be close understanding, cooperation and communication to ensure the exchange of information of mutual interest during the period of analysis. While they shall review the data concurrently when possible, each shall render his services within his own area of responsibility. For example, on quantitative factors (such as labor hours), the auditor may find it necessary to compare proposed hours with hours actually expended on the same or similar products in the past as reflected on the cost records of the contractor. From this information he can often project trend data. The technical specialist may also analyze the proposed hours on the basis of his knowledge of such things as shop practices, industrial engineering, time and motion factors, and the contractor's plant organization and capabilities. The interchange of this information will not only prevent duplication but will assure adequate and complementary analysis.

(iii) a contractor's or subcontractor's failure to comply with applicable Cost Accounting Standards or to follow consistently his disclosed cost accounting practices has resulted, or may result in, any increased cost paid by the Government; and

(iv) a contractor's or subcontractor's proposed price changes, submitted as a result of changes made to previously disclosed or established cost accounting practices, are fair and reasonable.

3-810 Exchange of Information. In appropriate cases it is desirable to exchange and coordinate specialized information regarding a contractor between Departments, bureaus, technical services, and other procuring activities since it will provide uniformity of treatment of major issues and it may aid in the resolution of particularly difficult or controversial issues.

3-811 Record of Price Negotiation.

(a) At the conclusion of each negotiation of an initial or a revised price, the contracting officer shall promptly prepare or cause to be prepared, a memorandum, setting forth the principal elements of the price negotiation, for inclusion in the contract file and for the use of any reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of the initial or revised price, including the current status of the contractor's procurement system. The memorandum should include an explanation of why cost or pricing data was, or was not, required (see 3-807) and, if it was not required in the case of any price negotiation in excess of $100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required (3-807.6), the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contracting officer in determining his total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which the contracting officer recognized in the negotiation that any cost or pricing data submitted by the contractor was inaccurate, incomplete, or non-current; the action taken by the contracting officer and the contractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the total price objective, the memorandum shall explain this difference. When field pricing support is furnished, the contracting officer shall forward copies of the memorandum to the cognizant ACO and auditor. When appropriate, information on how the advisory services can be made more effective in future negotiations with the contractor should be provided separately.

(b) As part of the requirement in (a) above, determination of the profit or fee objective, in accordance with 3-808, shall be fully documented. Since the profit objective is the contracting officer's pre-negotiation evaluation of the total

estimated profit under the proposed contract, the amounts set forth for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective, and from a detailed application of the weighted guidelines method to each element of the Contractor's Input to Total Performance as anticipated prior to negotiation. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes of the Contractor's Input to Total Performance need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained. The profit earned as a result of contract performance will generally vary from that anticipated at the time of negotiation.

(c) When the weighted guidelines method is not used because of unusual pricing situations (see 3-808.2(b)(2)), the contract file shall be documented to support the exceptions.

3-812 Disposition of Post Award Audits. An auditor's advisory report of post award reviews of cost and pricing data may result either from a specific request of a contracting officer (see 3-807.10) or from audit action initiated independent of a contracting officer's request. The contracting officer shall prepare a memorandum on each audit report indicating (1) whether defective data were submitted and relied upon and (2) the results of any contract action taken. A copy of the memorandum shall be forwarded to the auditor issuing the audit report and to the cognizant administrative contracting officer.

3-813 Preproduction and Startup and Other Nonrecurring Costs.

(a) Estimates of preproduction and startup costs include such costs as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs.

(b) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and of gaining an advantage over competitors in negotiations for future procurements, it is important to know whether the offeror intends to absorb any portion of these costs or whether he plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on procurements (including spare parts or other support items).

(c) When it is anticipated that such costs will be a significant factor in the evaluation of propsals for the procurement of an item, the request for proposals shall require the offeror to provide the following information:

(i) an estimate of the total of such costs;

(ii) the extent to which these costs are included in the proposed price; and

(iii) the intent to absorb, or plan for recovery, of any remaining costs.

firmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

(End of clause)

7-103.29 *Clean Air and Water.* In accordance with 1-2302.2, insert the following clause.

CLEAN AIR AND WATER (1975 OCT)

(Applicable only if the contract exceeds $100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any one year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c) (1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or the contract is not otherwise exempt.)

(a) The Contractor agrees as follows:

(i) to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract;

(ii) that no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing;

(iii) to use his best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and

(iv) to insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph (iv).

(b) The terms used in this clause have the following meanings.

(1) The term "*Air Act*" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "*Water Act*" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(3) The term "*clean air standards*" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section

111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(4) The term "*clean water standards*" means any enforceable limitation, control, condition, prohibition, standard or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "*compliance*" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "*facility*" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor, subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are colocated in one geographical area.

(7) The term "*nonexempt contract or subcontract*" means a contract or subcontract of more than $100,000 which is not otherwise exempted pursuant to the EPA regulations implementing the Air Act and Water Act (40 CFR 15.5), as further implemented in ASPR 1-2302.4 or in FPR 1-1.2302-4 (whichever is applicable) and the procedures of the Department awarding the contract.

(End of clause)

7-104 Clauses to be used when applicable.

7-104.1 *Clauses for Fixed Price Supply Contracts Involving Construction Work.*

(a) In accordance with 12-106 and 18-703, insert the clauses in 7-602.23.

(b) In accordance with 7-602.20 and 7-602.24, insert the clauses set forth therein in addition to the clause in 7-104.3.

7-104.2 *Workmen's Compensation and War Hazard Insurance Overseas.*

(a) In accordance with 10-403(a), insert the following clause.

WORKMEN'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (1960 JAN)

The Contractor before commencing performance under this contract shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable, a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

(End of clause)

(b) If a contract would otherwise be subject to 10-403(a) but 10-403(d) applies to some or all of the contractor's employees by reason of waiver by the Secretary of Labor, the provisions of 10-501.1(b) and (c) apply; and the following clause shall be included in the contract (see also 10-403(e)).

WORKMEN'S COMPENSATION AND WAR HAZARD INSURANCE OVERSEAS (1960 JUL)

(a) This clause applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to Workmen's Compensation Insurance under the Defense Base Act (42 U.S.C. 1651). On behalf of such waived employees, the Contractor, before commencing performance under this contract shall provide, and thereafter maintain, at least such Workmen's Compensation Insurance or the equivalent as may be required by the laws of the country of which such waived employees are nationals. The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act would be applicable but for the waiver, a clause similar to this paragraph (a), including this sentence, imposing on all such subcontractors a like requirement to provide such Workmen's Compensation Insurance coverage.

(b) This paragraph applies if the Contractor or any of his subcontractors employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq). On behalf of such waived employees the Contractor shall subject to reimbursement as elsewhere herein provided, afford protection the same as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., with respect to the definition of war hazard risks (injury, death, capture or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by Workmen's Compensation Insurance or equivalent. Unless the Contractor elects to directly assume the liability to subcontractor employees created by this clause, the Contractor further agrees to insert in all subcontracts hereunder to which the War Hazards Compensation Act would be applicable but for the waiver, a clause similar to this paragraph (b), including this sentence, imposing on all such subcontractors a like requirement to provide War Hazard benefits.

(End of clause)

(c) When the clause in (b) above is required, the following clause shall also be inserted in the contract, but only if the Head of a Procuring Activity or his designee has decided that the contractor shall not purchase insurance against the liability described in 10-403(d)(2) (see also 10-501.1(c)).

REIMBURSEMENT FOR WAR HAZARD LOSSES (1960 JUL)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workmen's Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

(i) The Contractor shall submit proof of loss files to support payment or denial of each claim.

(ii) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by Contracting Officer, the Contractor shall, convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.

(iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.

(iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of clause)

7-104.3 *Buy American Act and the Balance of Payments Program.* The following clause shall be inserted in all contracts not utilizing small purchase procedures for supplies and in contracts for services which require the furnishing of supplies (e.g., the leasing of equipment), in accordance with 6-103.4, 6-103.7, and 6-803.2(a)(i) - (xi).

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (1980 OCT)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies which are directly incorporated into end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

sated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the .....,* shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

*In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Supply Agency Regulation 8210.1, dated 8 October 1971, subject, Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

7-104.11 *Excess Profit.*

(a) Pursuant to 10 U.S.C. 2382 and 7300 and except as provided in (b) and (c) below, any contract in an amount which exceeds or may exceed $10,000, known to be for the construction or manufacture of all or part of any complete aircraft or naval vessel, shall contain the following clause, except that the words "if this contract is in an amount which exceeds $10,000" may be inserted at the beginning of the clause in formally advertised contracts:

EXCESS PROFIT (1957 JUN)

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U.S.C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections; *provided* however, that this clause shall not be construed to enlarge or extend by contract the obligations imposed by those sections. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

(End of clause)

(b) In any contract where only certain items or lots totaling more than $10,000 are subject to 10 U.S.C. 2382 or 7300, the foregoing clause should be modified to make the agreement of the contractor applicable only to such items or lots. In any contract where only certain items or lots totaling $10,000 or less would otherwise be subject to 10 U.S.C. 2382 or 7300, the foregoing clause should not be included in the contract even though the total amount of the entire contract exceeds $10,000.

(c) In any contract, otherwise subject to 10 U.S.C. 2382 or 7300, for scientific equipment used for communication, target detection, navigation or fire control, as designated by the Secretary, the clause prescribed in (a) above shall not be included, and the following clause shall be inserted in lieu thereof:

EXCESS PROFIT (1957 JUN)

The Secretary having designated the supplies called for by this contract to be scientific equipment used for communication, target detection, navigation, or fire control, the provisions of 10 U.S.C. 2382 and 7300 are not applicable to this contract.

(End of clause)

7-104.12 *Military Security Requirements.* Insert the following clause in all classified contracts (see 1-201.34). If the situation warrants because of the nature of the item, or the location or the conditions under which the contract is to be performed, such contract shall include a separate provision for such additional security safeguards as may be required (see paragraphs 1-103, 1-108, 1-115, and 1-116, ISR). When the Military Security Requirements clause is inserted in any contract, the contracting officer or his authorized representative shall approve and transmit a Contract Security Classification Specification (DD Form 254) in accordance with 16-811 and Section VII, DoD 5220.22-R. The DD Form 254 is required in connection with all classified subcontracts unless excepted by DoD 5220.22-R.

MILITARY SECURITY REQUIREMENTS (1971 APR)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified "Confidential," "Secret" or "Top Secret."

(b) The Contractor shall comply with (i) the Security Agreement (DD Form 441), including the attached Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M); and (ii) any revisions thereto, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government as provided in this clause and the security costs or time required for delivery under this contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provision of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(d) The Contractor agrees to insert in all subcontracts hereunder which involve access to classified information provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause.

(End of clause)

7-104.13 *Preference for Certain Domestic Commodities.* The following clause shall be included in all contracts for the acquisition of food, clothing and textiles as identified.

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (1980 OCT)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico; *Provided,* That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see Section VI).

(End of clause)

7-104.14 *Utilization of Small Business and Small Disadvantaged Business Concerns.*

(a) In accordance with 1-707.3(a), insert the following clause.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(End of clause)

7-104.33 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause:

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-104.34 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the following clause.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

ADVANCE PAYMENT (1980 DEC).

(1) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (14)(d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (14)(a) below; and (iii) without a properly certified invoice or invoices.

(2) *Special Bank Account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14)(b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided,

each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer, or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent").

[*When considered not reasonably necessary for the protection of the Government, the countersignature requirement may be waived for contractors who are financially strong, with good performance records and good past experience with regard to contract cost disallowances. In such cases, the following sentence may be added to paragraph (2)*]:

Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

[*In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, insert the following paragraph instead of paragraph (2) above.*]

(2) The Contractor shall determine the estimated amount of advance payment necessary to meet the requirements of paragraph (3) hereof entitled "Use of Funds" to cover performance of the contract. This determination shall be pursuant to written instructions provided by the Administering Office (see paragraph (14)(d) hereof) relative to the (i) shortest practical period for which advance payments will be provided, (ii) format and frequency of requests for advance payments, and (iii) data required in support of each request. The estimate shall be adjusted for the amount by which actual cash expenditures for prior period performance of the contract exceeded or was less than the advance payments provided for such performance. The Contractor shall submit its estimate and supporting data in a Statement of Contractor's Request for Advance Payment to the Approving Official designated in writing by the Administering Office for advance payments. The request should be submitted sufficiently early to permit review, approval and disbursement of the required advance payment by the time the funds are actually needed by the Contractor.

(a) The Approving Official will review the Contractor's advance payment requirements to determine the reasonableness thereof, and if he or she concurs therein, the statement will be approved and forwarded to the Disbursing Office designated in the contract for payment. If the Approving Official determines that the advance payment requested by the Contractor is in excess of cash requirements for contract performance during the specified period of time, he or she will approve an amount based on such determination and forward the statement to the Disbursing Office for payment of the reduced amount. Upon any such reduction, the Approving Official will immediately notify the Administering Office in writing, with a copy to the Contractor, of the amount requested, the amount approved, and the reasons for reduction. The Administering Office will determine whether additional funds will be advanced to the Contractor.

(b) Upon receipt of the approved statement, the Disbursing Office will draw a Treasury check payable to the Contractor for the amount authorized by the Approving Official and mail such check to the Contractor in time to be received on or about the date the funds are required for contract performance.

(3) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Section XV of the Armed Services Procurement Regulation), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[*In the case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (3) above.*]

(3) *Use of Funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost as defined in Article ..... of this contract, or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[*In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, insert the following paragraph instead of paragraph (3) above.*]

(3) *Use of Funds.* Advance payments hereunder are to be used by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Section XV of the Defense Acquisition Regulation), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(4) *Return of Funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advances previously made and liquidated) in excess of the amount specified in paragraph 14(a). In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the office designated for contract administration signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

[*In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, the last sentence of paragraph (4) above should be omitted.*]

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to (—percent) of the stated contract price of $....., or such lesser amount to which the contract price may have been reduced, plus (i) increases, if any (not resulting from any provisions for price redetermination or economic price adjustment), in the above stated contract price not exceeding, in the aggregate $..... (*Insert here not more than ten percent (10%) of stated contract price above*), and (ii) all increases in contract price resulting from any provision for price redetermination or economic price adjustment, the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract, all advance payments and interest charges have not been fully liquidated the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[*The percentage stated above should not be more than 95 percent. In appropriate cases, where more rapid liquidation is desirable, the following sentence may be inserted at the beginning of paragraph (5), with appropriate percentage specified.*]

To liquidate the principal amount of any advance payment made to the Contractor hereunder, there shall be deductions of .....percent from any and all payments made by the Government under the contracts involved.

[*In case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (5) above.*]

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to the total estimated cost of $..... for the work under this contract (not including fixed fee, if any), or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, $..... (*Insert not more than ten percent (10%) of estimated costs stated above*), (including, without limitation, reimbursable costs incident to termination for the convenience of the Government as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges, until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[*In case the alternate procedure for advance payment without a bank account is to be used in accordance with E-413.1, insert the following paragraph (5) instead of one of the above.*]

(5) *Liquidation.* The Contractor should submit cost reimbursement vouchers on a regular and frequent basis in accordance with the payment provision of this contract. The Government shall withhold payments of such vouchers due the Contractor and apply the amounts withheld against the Contractor's obligation to repay advance payments made hereunder and interest charges thereon until such advance payments and interest charges shall have been fully liquidated upon completion or termination of the contract, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(6) *Interest Charge.* If required in paragraph (14)(c) below and at the daily rate therein specified, the Contractor shall pay interest to the Government upon the daily unliquidated balance of advance payments made under this contract. If the full amount of such interest is not paid by deduction or otherwise upon the completion or termination of this contract, the deficiency shall be paid by the Contractor to the Government upon demand. Interest at the daily rate specified in paragraph (14)(c) shall be computed at the end of each calendar month in the manner herein specified on the daily balance of the principal of the advance payments outstanding. Notwithstanding monthly computation, interest shall be computed for the actual number of days involved, on the basis of a 365- or 366-day year as the case may be. In determining such balance, (1) charges on account of the advance payments to the Contractor shall be made as of the date of the checks therefor, and (2) credits arising from deductions from payments to the Contractor shall be made as of the date of issue of the checks for such payments. [*For cost-reimbursement contracts, use, instead of (2) above:* (2) credits resulting from deductions from cost reimbursements shall be made upon the approval of the vouchers by the Disbursing Officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher, which date as to each such voucher shall be certified by the Contracting Officer or his duly authorized representative.] Also, in determining such balance, credits arising from cash repayments to the Government by the Contractor shall be made as of the date the checks therefor are received by the Disbursing Officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments otherwise due to the Contractor under the contracts on which advance payments have been made. [*For cost-plus-fixed-fee contracts, use the following, instead of the next preceding sentence:* As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under the contract.] In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the contract price or fixed fee as the case may be. The interest shall not be compounded, and shall, subject to the provisions of paragraph (11) hereof, cease to accrue with respect to each contract upon which advance payments are outstanding hereunder, upon termination of such contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

(7) *Bank Agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank with the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

(8) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder together with interest charges thereon.

(9) *Lien on Property Under Contract.* Any and all advance payments made under this contract, together with interest charges thereon, shall be secured, when made by a lien in favor of the Government, paramount to all other liens, upon th the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor The Contractor shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt sh shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(10) *Insurance.* The Contractor represents and warrants that he is now maintaining with responsible insurance carriers, (i) insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, he will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder, and (iii) furnish such certificates with respect to his insurance as the Administering Office may from time to time require.

(11) *Default Provisions.* Upon the happening of any of the following events of default, (i) termination of this contract by reason of fault of the Contractor (ii) a finding by the Administering Office that the Contractor (a) has failed to observe any of the covenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or (b) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (c) has allocated inventory to this contract substantially exceeding reasonable requirements, or (d) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (iv) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, or (v) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances; (a)

withdraw all or any part of the balance in the Special Bank Account by checks payable to the office designated for contract administration signed solely by the Countersigning Agent and apply such amounts in reduction of advance payments then outstanding hereunder and in reduction of any other claims of the Government against the contractor; (b) charge interest on advance payments outstanding during the period of any such default at either (i) the published prime rate of the banking institution in which the special bank account is established, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater; (c) demand immediate repayment of the unliquidated balance of advance payments hereunder; or (d) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit references to the published prime rate of the financial institution and a special bank account in paragraph (11) above.]

(12) *Prohibition Against Assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(13) *Information—Access to Records.* The Contractor shall furnish to the Administering Office signed or certified balance sheets and profit and loss statements monthly, or at such other intervals as may be required, together with a monthly report on the operation of the Special Bank Account in prescribed form, and such other information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records and accounts.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit the words "together with a monthly report on the operation of the special bank account in prescribed form" beginning in the 3rd line of paragraph (13) above.]

(14) *Designations and Determinations.*

(a) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $. ..... *[or alternatively:]*

(a) *Amount.* The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts paid or withdrawn pursuant to paragraph (4)) shall not exceed $.....

(b) *Depository.* The bank designated for the deposit of payments made hereunder shall be ..... *[This paragraph should be omitted if the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1.]*

(c) *Interest Charge.* Interest shall be charged in the manner provided herein at either (i) the published prime rate of the banking institution in which the special bank account is established as set forth in paragraph (14)(b) above, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater. *[In the case of advance payments made without interest insert the following:]* No interest shall be charged for advance payments made hereunder, except as provided for in paragraph (11)(b). The Contractor shall charge interest at either (i) the published prime rate of the banking institution in which the special bank account is established as set forth in paragraph (14)(b) above, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater, on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experiment, research or development work.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit "either (i) the published prime rate of the banking institution in which the special bank account is established as set forth in paragraph (14)(b) above or (ii)" and "whichever is greater" in (14)(a) above.]

(d) *Administering Office.* The office administering advance payments is designated as .....

(15) *Other Security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Administering Office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Administering Office, to the extent that such additional security is available.

(16) *Representations and Warranties.* To induce the making of the advance payments, the Contractor represents and warrants that—

(a) The balance sheet, the profit and loss statement and any other supporting financial statements, heretofore furnished to the Administering Office, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor

(b) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(c) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Administering Office.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(d) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor

(e) The Contractor has the power to enter into this contract and accept advance payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(f) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Administering Office. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(g) All information furnished by the Contractor to the Administering Office in connection with each request for advance payments is true and correct.

(h) These representations and warranties shall be continuing, and shall be deemed to have been repeated by the submission of each invoice for advance payments. (MAY 1959)

(17) *Subadvances*. Substantially the following provision should be included in the contract when subadvances are contemplated

Subject to the prior written approval of the Administering Office, funds from the Special Bank Account may be used by the Contractor to make advance payments or down payments to subcontractors and materialmen in advance of performance by the subcontractor or materialman. Such subadvances shall not exceed ..... percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor Unless other security is required by the Administering Office, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance, with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplementary hereto) between the Government, the Contractor and the Bank, may be considered as adequate security for such subadvance.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit paragraph (17) above.]

(18) *Covenants*. The following are examples of some special provisions (subject to modification to adapt to the circumstances of individual cases) that may be utilized when and to the extent deemed appropriate in particular cases.

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not, without the prior written consent of the Administering Office:

(a) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the contractor now owned or hereafter acquired by him, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder,

(b) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(c) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of his capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Administering Office incident to the establishment of these advance payment provisions,

(d) Sell, convey or lease all or a substantial part of his assets;

(e) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;

(f) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(g) Permit a writ of attachment or any similar process to be issued against his property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process,

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(h) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to his directors, officers, or key employees in excess of existing rates of payments or of rates provided in existing agreements, in connection with which notice has been given to the Administering Office, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder, or employ any person at a rate of compensation in excess of $..... per annum.

(i) Make any substantial change in management, ownership, or control of the corporation;

(j) Merge or consolidate with any other firm or corporation, change the type of his business or engage in any transaction outside the ordinary course of his business as presently conducted;

(k) Deposit any of his funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(l) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;

(m) Make or covenant himself to make capital expenditures exceeding in the aggregate $.....;

(n) Permit his net current assets, calculated in accordance with generally accepted accounting principles, to become less than $.....; or

(o) Make any payments on account of the obligations listed below, except in the manner and to the extent herein provided.

[End of clause]

7-104.35 *Progress Payments*. In accordance with E-510, insert one of the following clauses:

(a) Progress Payment Clause for Other Than Small Business Concerns.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENT FOR OTHER THAN SMALL BUSINESS CONCERNS (1978 JUL)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of Amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be (i) eighty percent (80%)**(See footnote at end of clause) of the amount of the Contractor's total costs which, except as provided in (a)(2) below, shall include only those recorded costs which result, at the time of the request, from payment made by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct in-house costs, and for properly allocable and allowable indirect costs, all as shown by records maintained by the Contractor for purposes of obtaining payment under Government contracts plus (ii) the amount of progress payments which have been paid to Contractor's subcontractors and other divisions as provided in (j) below; all less the sum of previous progress payments.

knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each subcontract hereunder which exceeds $100,000 when entered into except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of $100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. The requirements of this clause shall be limited to such contract modifications.

(b) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to award of any subcontract, the amount of which is expected to exceed $100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000 when entered into.

(End of clause)

(b) Insert the following clause in all contracts, both formally advertised and negotiated, which exceed $100,000 other than those described in (a) above:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS (1970 JAN)

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. The requirements of this clause shall be limited to such modifications.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed $100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract which exceeds $100,000.

(End of clause)

(c) The requirement for inclusion of the above clauses in contracts with foreign governments or agencies thereof may be waived in exceptional cases by the Head of a Procuring Activity, stating in writing his reasons for such determination.

7-104.43 *Reserved.*

7-104.44 *Value Engineering (VE).*

(a) In accordance with 1-1704, insert the following clause:

VALUE ENGINEERING (1980 DEC)

(a) *Applicability.* This clause applies to any Value Engineering Change Proposal (VECP) developed, prepared, and submitted by the Contractor.

(b) *Definitions.*

(1) "Acquisition savings" means savings resulting from the application of VECPs to contracts awarded by the same contracting office for essentially the same unit. Acquisition savings include:

(i) instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the unit cost reduction multiplied by the number of units affected by the VECP, less the Contractor's allowable development and implementation costs (on service contracts, the unit cost reduction is multiplied by the labor-hour rate agreed upon for the tasks involved; then the Contractor's allowable development and implementation costs are subtracted from the total);

(ii) concurrent contract savings, which are measurable net reductions in the prices of other contracts of the contracting office in existence at the time the VECP was accepted; and

(iii) future contract savings, which are the product of the unit cost reduction under the instant contract, adjusted to consider the effects of learning, quantities, or other similar factors, multiplied by

the number of units scheduled for delivery during the sharing period. If the instant contract is a multiyear contract, future contract savings include savings on all quantities funded after VECP acceptance.

(2) "Collateral costs" means agency costs of operation, maintenance, logistic support, or Government-furnished property.

(3) "Collateral savings" means those measurable net reductions resulting from the VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

(4) "Contractor's development and implementation costs" means costs which the Contractor incurs specifically in its development, testing, preparation, and submission of the VECP, as well as its costs to make the contractual changes required by Government acceptance of the VECP.

(5) "Government costs" means those agency costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistics support. They do not include the normal administrative costs of processing the VECP.

(6) "Instant contract" means this contract, under which the VECP is submitted. It does not include increases in quantities after approval of the VECP due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, it does not include quantities funded after VECP approval. In a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established. These additional quantities shall be treated as future contracts.

(7) "Negative instant contract savings" means that the acceptance of the VECP results in:

(i) a reduction in the instant contract of the actual unit cost;

(ii) an excess of contractor's development and implementation costs as compared to the unit cost reduction multiplied by the number of units affected; and

(iii) a consequent equitable adjustment increasing the instant contract price.

These savings are not a Government cost.

(8) "Net acquisition savings" means acquisition savings less Government costs.

(9) "Sharing period" means that period that extends to the 3 years after acceptance of the first item incorporating the VECP, or the delivery schedule in effect for all affected end items on the instant contract when the VECP is accepted, whichever is longer.

(10) "Unit" means the item or task to which the parties agree the VECP shall apply.

(11) "Unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any development or implementation costs and, for future contracts, with adjustments for learning, change in quantities, or other similar factors as necessary) resulting from using the VECP. On service contracts, the unit cost reduction is equal to the costs per hour multiplied by the number of hours per line item task saved by the VECP.

(12) "Value Engineering Change Proposal (VECP)" means a proposal that:

(i) requires a change to this, the instant contract, to implement; and

(ii) results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, *provided* That it does not involve a change:

(A) in deliverable quantities only;

(B) in R&D quantities or test quantities due solely to results of previous testing under the instant contract; or

(C) to the contract type only.

(c) *VECP Preparation.* As a minimum, the Contractor shall include the information described in (1) through (7) below in each VECP. If the proposed change affects contractually required configuration management or similar

procedures, the instructions in the procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement; the comparative advantages and disadvantages of each; a justification when an item's function or characteristics are being altered; the effect of the change on the end item's performance; and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for both the affected portions of the existing contract requirement and the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (i) of this clause. The Contractor shall also include a description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation, and operating and support costs.

(4) A projection of any effects the proposed change would have on collateral costs to the agency.

(5) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(6) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(7) Identification of the unit to which the VECP applies.

(d) *Submission.*

(1) The Contractor shall submit VECPs to the Principal Contracting Officer (PCO), unless otherwise designated in the contract. When the contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the PCO and to the Administrative Contracting Officer (ACO). The PCO shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional

time is required because of extenuating circumstances, the Contractor shall be notified within the 45-day period and provided the reason for the delay and the expected date of the Contracting Officer's decision. VECPs shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall provide the Contractor with written notification, explaining the reasons for rejection. The Contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(e) *Acceptance.* Any VECP may be accepted in whole or in part by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after the contract performance is completed. If a VECP is accepted, the Contractor shall share in the net acquisition savings realized by the Government in accordance with paragraph (f) below. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP, and the decision as to which of the sharing rates in (f)(1) below are applicable shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978.

(f) *Sharing.*

(1) Rates. The Contractor shall share in net acquisition savings at a percentage rate determined by (i) the type of contract; (ii) the Value Engineering clause or alternate clause used; and (iii) if applicable, the schedule in this contract, as follows:

TYPE OF CONTRACT	Incentive (Voluntary) Instant	Incentive (Voluntary) Concurrent and Future	Program Requirement (Mandatory) Instant	Program Requirement (Mandatory) Concurrent and Future
Fixed-Price (Other than Incentive)	50	50	25	25
Incentive (Fixed-Price or Cost)	*	50	*	25
Cost-Reimbursement** (Other than Incentive)	25	25	15	15

* Same ratio as the contract's cost incentive ratio.
** Includes cost-plus-award-fee contracts.

(2) Computation of Net Acquisition Savings.

a. Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset. Except in incentive contracts, Government costs, and any price or cost increases resulting from negative instant contract saving (see (f)(3)(i)), shall be offset against acquisition savings as such savings are realized on the instant contract, reductions negotiated in concurrent contracts, awards of future contracts, or agreement on a lump-sum payment for future savings (see (f)(4)). The Contractor's share of savings is computed by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see (f)(1)). Additional payments of the Contractor's share of net acquisition savings shall be paid to the Contractor at the time realized.

b. If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share in savings on the instant contract items affected through the contract incentive structure. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future savings.

(3) Contract Adjustment and Payment. The modification accepting the VECP shall:

(i) reduce the contract price or estimated cost by the value of instant contract savings, unless this is an incentive contract for which a fixed price has not been established (regardless of contract type, when instant contract savings are negative, the contract price, target price or cost, estimated cost, or ceiling price will be increased);

(ii) specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(iii) specify the amount of any Government costs or negative instant contract savings to be offset against net acquisition savings realized from concurrent or future contract savings; and

(iv) provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(A) Fixed-price contracts--add to contract price.

(B) Cost-reimbursement contracts--add to contract fee.

(4) Concurrent and Future Contract Savings.

a. Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with (f)(3)(iv). For incentive contracts, add shares as a separate firm-fixed-price line item on the instant contract. When sharing on future contracts is expected, the Contractor shall maintain records to identify the first delivered unit for 3 years after final payment under the instant contract. If the instant contract is for low rate initial production or an earlier life-cycle phase, the future sharing period shall encompass scheduled deliveries, equal in number to the quantity required by the highest 36 consecutive months of planned production, based on the Five Year Defense Program (FYDP) or other planning documentation at the time the VECP is accepted.

b. When the Government wishes and the Contractor agrees, payment of the Contractor's share of future contract savings may be made in a single lump-sum payment rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in the modification incorporating the VECP into the instant contract and shall not be subject to subsequent adjustment.

c. The Contractor's share on concurrent savings shall be determined by taking the reduction in price of the concurrent contract, subtracting any Government costs or increase in instant contract price or target not yet offset, and multiplying the result by the Contractor's sharing percentages.

d. The Contractor's share on future contracts shall be determined by multiplying the number of units scheduled for delivery prior to the expiration of the sharing period times the unit cost reduction appropriate to the contract times the Contractor's sharing rate.

e. If the Government properly rejects or does not receive units on which the share is paid, the Contractor shall reimburse the Government the proportionate share of these payments.

(g) *Collateral Savings*. If a VECP is accepted, the instant contract amount shall be increased, as specified in (f)(3)(iv), by 20 percent of the projected net reduction in collateral costs determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (i) the contract's firm fixed price, target price, target cost, or estimated cost at the time the VECP is accepted, or (ii) $100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause. In all cases, degradation of performance, service life, or capability shall be considered in determining savings.

(h) *Relationship to Other Incentives*. Those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. The targets of such incentives affected by

the VECP shall not be adjusted because of VECP acceptance. If this contract does not provide such incentives to surpass specified targets, the VE sharing shall apply only to the amount of achievement better than target.

(i) *Subcontracts*. The Contractor shall include appropriate VE clauses in any subcontract of $100,000 or more and may include them in subcontracts of lesser value. To compute any adjustment in the contract price under paragraph (f) above, the Contractor's VECP development and implementation costs shall include any subcontractor's development and implementation costs and any VE incentive payments to subcontractors that clearly result from the VECP. No such payment or accrual to a subcontractor will be permitted to reduce the Government's share of concurrent, future, or collateral savings.

(j) *Data*. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by making the following legend on the affected parts:

> "These data, furnished under the Value Engineering clause of Contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data.

(End of clause)

(b) Alternate I. In accordance with 1-1704.2, if the Contracting Officer selects a mandatory VE program requirement, substitute the following in place of paragraph (a) of the basic clause:

(a) *General.* The Contractor shall (i) engage in a VE program and submit VE progress reports as specified in the contract schedule, and (ii) submit to the Contracting Officer any resulting Value Engineering Change Proposals (VECPs). (1980 DEC)

(End of clause paragraph)

(c) Alternate II. In accordance with 1-1704.3, if the Contracting Officer selects both a VE incentive and mandatory VE program requirement, substitute the following in place of paragraph (a) of the basic clause:

(a) *Applicability.* This clause applies to any Value Engineering Change Proposal (VECP) developed, prepared, and submitted by the Contractor. For those contract line items designated in the schedule as subject to the VE program requirement, the Contractor shall (i) engage in a VE program and submit VE progress reports as specified in the schedule, and (ii) submit to the Contracting Officer any resulting VECPs. The VE incentive provisions shall apply to the remaining areas of the contract. (1980 DEC)

(End of clause paragraph)

(d) Alternate III. In accordance with 1-1704.4, when the head of the contracting activity determines that the cost of computing and tracking collateral savings will exceed the benefits to be derived, use the basic clause in 7-104.44, delete paragraph (g), and renumber the remaining paragraphs.

(e) Alternate IV. If a mandatory VE program requirement is included in an architect-engineer contract, use the clause in 7-104.44, but substitute paragraph (a) below for paragraph (a) of the basic clause, delete paragraphs (f), (g), and (h) of the basic clause, and renumber the remaining paragraphs.

(a) *General.* The Contractor shall (i) engage in a VE program and submit VE progress reports as specified in the contract schedule, and (ii) submit to the Contracting Officer any resulting Value Engineering Change Proposals (VECPs). (1980 DEC)

(End of clause paragraph)

[The next page is 7:105.]

7-104.45 *Limitation of Liability.*

(a) In accordance with 1-330, insert the following clause.

LIMITATION OF LIABILITY (1974 APR)

(a) Except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) occurring after acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply when the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) all or substantially all of the Contractor's business; or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed, or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses suffered by the Government through purchase or use of the contract supplies required to be delivered to the Government under this contract, the Contractor shall be liable to the Government to the extent of such insurance or reserve for self-insurance for damages or losses to property of the Government occurring after acceptance of the supplies delivered to the Government under this contract and resulting from any defects or deficiencies in such supplies.

(d) The substance of this clause, including this paragraph (d) suitably altered to reflect the relationship of the contracting parties, shall be included in all subcontracts hereunder.

(End of clause)

(b) In accordance with 1-330, in procurements of major items, insert the following clause.

LIMITATION OF LIABILITY — MAJOR ITEMS (1979 MAR)

(a) Except as provided below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) occurring after acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply when the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) all or substantially all of the Contractor's business, or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed, or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses suffered by the Government through purchase or use of the contract supplies required to be delivered to the Government

under this contract, the Contractor shall be liable to the Government for damages or losses to property of the Government occurring after acceptance of the supplies delivered to the Government under this contract and resulting from any defects or deficiencies in such supplies to the extent of such insurance or reserve for self-insurance.

(d) This clause does not diminish the Contractor's obligation, to the extent otherwise arising under this contract, relating to correction, repair, replacement or other relief for any defect or deficiency in supplies delivered under this contract. If loss or damage has occurred and correction, repair, or replacement is no longer feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer,

(i) pay to the Government the amount which it would have cost the Contractor to make such correction, repair or replacement before the loss or damage occurred, or

(ii) provide other equitable relief.

(e) The provisions of this clause shall not limit or otherwise affect the Government's rights pursuant to the following listed clauses, if included in this contract:

GROUND AND FLIGHT RISKS,
GOVERNMENT PROPERTY, and
WARRANTY OF TECHNICAL DATA.

(f) In all subcontracts hereunder, except those covered by (g) below, the Contractor shall either:

(i) insert, with the advance written consent of the Contracting Officer, the substance of this clause, including this paragraph (f), suitably altered to reflect the relationship of the contracting parties; or

(ii) insert the substance of the clause in 7-104.45(a) suitably altered to reflect the relationship of the contracting parties.

(g) In subcontracts for both major items for which this clause is appropriate, and other end items for which the clause in 7-104.45(a) is appropriate, the substance of both clauses shall be included, with the advance written consent of the Contracting Officer. The Contractor shall identify high unit cost items by line item and include the following preamble to this clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

(End of clause)

(c) In contracts for the purchase of both major items (see 1-330) for which the clause in (b) above is appropriate, and other contract end items for which the clause in (a) above is appropriate, the clauses in both (a) and (b) above shall be included. The Contracting Officer shall identify high unit cost items by line item and include the following preamble to the Limitation of Liability - Major Items clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

7-104.46 *Required Sources for Precision Components for Mechanical Time Devices.* In accordance with 1-2207.4, insert the following clause:

REQUIRED SOURCES FOR PRECISION COMPONENTS FOR MECHANICAL TIME DEVICES (1971 AUG)

(a) For the purpose of this clause

technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phases of contractual performance. DD Form 1494, "Application for Frequency Allocation," shall be used for this purpose and shall be prepared in accordance with instructions contained on the form.

(c) This clause including this paragraph (c), shall be included in all subcontracts which call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

7-104.62 *Material Inspection and Receiving Report.* Insert the following clause in all contracts which anticipate delivery of a separate and distinct object or entity whether separately priced or not.

MATERIAL INSPECTION AND RECEIVING REPORT (1969 DEC)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by ASPR Appendix I, "Material Inspection and Receiving Report."

(End of clause)

However, when contract administration is retained by the purchasing office, the clause is not required in the following situations unless the use of a MIRR is desired by the contracting officer:

(i) procurements effected under Section III, Part 6—Small Purchase and Other Simplified Purchase Procedures;

(ii) negotiated subsistence procurements;

(iii) procurements of fresh milk and related fresh dairy products;

(iv) contracts for which the end item is a scientific or technical report;

(v) research and development procurements not requiring the delivery of separately priced end items;

(vi) base, post, camp or station procurements;

(vii) in overseas areas when the contracting officer determines that the preparation and distribution of DD Form 250 by the contractor would be impracticable, the contracting officer shall arrange for the contractor to provide the information necessary for the preparation of the DD Form 250 by the contract administration personnel; and

(viii) procurements for services where hardware is not acquired as an item in the contract, *e.g.*, level of effort type contracts; field service type contracts, etc.

A MIRR is not required when indefinite delivery type contracts are placed by central procurement offices which authorize only base, post, camp or station activities to issue orders, *provided* that such contract and orders are not assigned for administration.

7-104.63 *Protection of Government Buildings, Equipment and Vegetation.* Insert the following clause in all contracts which involve the performance of services on a Government installation.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (1968 FEB)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the Government installation. If the Contractor fails to do so and damages any such buildings, equipment, or vegetation, he shall replace or repair the damage at no expense to the Government as directed by the Contracting Officer. If he fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost thereof which may be deducted from the contract price.

(End of clause)

7-104.64 *Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology.* In accordance with 1-2403 insert the following clause.

RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES (1980 FEB)

(a) Definitions.

(1) *Commercial sale* means a sale to a customer (either foreign or domestic) other than the U.S. Government by a defense contractor of products, technology, material, services, and/or development or production techniques that were originally developed, improved, or produced using DOD appropriations/funds.

(2) *Domestic organization* means any U.S. nongovernmental organization or private commercial firm.

(3) *Technology* means a collection of information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or materiel. It may take a tangible form, such as as scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

(4) *Nonrecurring research, development, test, and evaluation (RDT&E) costs* are those costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration. This includes costs of any engineering change proposal initiated prior to date of the contract with the customer, as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either Procurement or Operations and Maintenance appropriations to improve the product.

(5) *Nonrecurring production costs* are those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run from which delivery is to be made, which would normally be expensed against a production run. These nonrecurring costs include such costs as preproduction, special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing, and evaluation.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(a) The Contractor hereby certifies, as of the date of this contract, to be in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR 705, Appendix, and Part 706).

(b) If it is later determined, after notice and opportunity to be heard, that the Contractor was willfully not in compliance with such standards as of the date of this contract, then this contract may be terminated in accordance with the provisions of the Termination for Default clause.

(c) Should the Government determine that termination for default would not be in the public interest, the Contractor agrees to accept an equitable reduction of the contract price or cost allowance and profit or fee, as appropriate under the circumstances.

(d) The Contractor shall require a Certification - Wage and Price Standards, limited to (a) above, as a condition of award of any first-tier subcontract which exceeds $5 million. The Contractor further agrees that should any price adjustment in subcontract prices result from the operation of this provision as to subcontracts, he will advise the Contracting Officer and an equitable adjustment of the contract price will be made. The operation of this provision in any subcontract shall not excuse the Contractor from performance of this contract in accordance with its terms and conditions. Any waiver or relaxation of the certification requirements with respect to such first-tier subcontractors can only be made by the Secretary.

(End of clause)

7-104.102 *Certification of Requests for Adjustment or Relief Exceeding $100,000.* In accordance with 1-342, insert the following clause.

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (1980 FEB)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

_____
(Official's Name)

_____
(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(i) requests for routine contract payments—for example, those for payment for accepted supplies and services, routine vouchers under cost reimbursement-type contracts, and progress payment invoices;

(ii) final adjustments under incentive provisions of contracts;

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

7-104.103 *Delivery of Excess Quantities of $100 or Less.* The following clause may be inserted in contracts for supplies:

DELIVERY OF EXCESS QUANTITIES OF $100 OR LESS (1980 DEC)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $100 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $100 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

7-104.104 *Reserved.*

(e) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and materials during all reasonable times until the expiration of three (3) years from the date of final payment under this contract or for the time periods specified in Appendix M of the Armed Services Procurement Regulation, whichever expires earlier.

(End of Clause)

7-108 Incentive Price Revision Clauses.

7-108.1 *Firm Targets.* When in accordance with the provisions of Section III, Part 4, the fixed-price incentive contract described in 3-404.4(a) (2) is to be used, the following clause shall be made a part of the contract. As to each item which is to be subject to incentive price revision, the contract schedule shall set forth the target cost, target profit, target price.

INCENTIVE PRICE REVISION (FIRM TARGET) (1980 FEB)

(a) *General.* The supplies or services identified in the Schedule as items ..... are subject to price revision in accordance with the provisions of this clause; *provided*, that in no event shall the total final price of such items exceed ..... dollars ($.....). Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(b) *Definition of Cost.* For the purposes of this clause, "cost" or "costs" means allowable cost in accordance with Section XV of the Defense Acquisition Regulation as in effect on the date of this contract.

(c) *Submission of Data.* Within ..... (.....) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph (a) above, the Contractor shall submit, on DD Form 633 or other form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items, and (iii) a list of all residual inventory and an estimate of the value thereof.

(d) *Price Revision.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total final price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total final price shall be established by adjusting the total final negotiated cost by an amount for profit or loss determined as follows:

WHEN THE TOTAL FINAL NEGOTIATED COST IS:	THE ADJUSTMENT FOR PROFIT OR LOSS IS:
Equal to the total target cost ------	Total target profit.
Greater than the total target cost ---	Total target profit less ___ percent (___%) of the amount by which the total final negotiated cost exceeds the total target cost.
Less than the total target cost -----	Total target profit plus ___ percent (___%) of the amount by which the total final negotiated cost is less than the total target cost.

(3) The total final price of the items referred to in paragraph (a) above shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such price shall not be subject to revision notwithstanding any changes in the cost of performing the contract, with the following exceptions:

(i) insofar as the parties may agree in writing, prior to the determination of the total final price, (A) to exclude any specific elements of cost from the total final price and (B) to a procedure to provide subsequent disposition of such elements; and

(ii) to the extent any adjustment or credit is explicitly permitted or required by this or any other clause of this contract.

(4) When the Contractor fails to submit the data required by paragraph (c) above within the time required therein and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in DAR 7-104.39. Interest shall be computed for the period from the date the data was due to the date of repayment.

(e) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(f) *Adjustment of Payments.* Pending execution of the contract modification referred to in subparagraph (d)(3) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices set forth in this contract; *provided*, that if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (g)(2) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target price and the ceiling price upon submission of factual data from the Contractor showing that final costs under this contract will be substantially greater than target cost. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the determination of the total final price under paragraph (d) above. After execution of the contract modification referred to in subparagraph (d)(3) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(g) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (g) shall not apply after final price revision.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contract Administration Office, with a copy to the purchasing activity and the cognizant contract auditor, a cumulative statement setting forth:

(i) the total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) that portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (d)(2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services;

(iv) the total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invo-

7-602.48 *Reserved.*

7-602.49 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-602.50 *Value Engineering Incentive--Construction.* In accordance with 1-1704.6, insert the following clause in all construction contracts of $100,000 or more except incentive contracts:

VALUE ENGINEERING INCENTIVE--CONSTRUCTION (1980 DEC)

(a) *Applicability.* This clause applies to any Contractor developed, prepared, and submitted Value Engineering Change Proposal (VECP).

(b) *Definitions.*

(1) "Contractor's development and implementation costs" means those costs incurred on a VECP before Government acceptance and those costs the Contractor incurs specifically to make the changes required by Government acceptance of a VECP.

(2) "Government costs" means those agency costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistic support. They do not include the normal administrative costs of processing the VECP.

(3) "Instant contract savings" means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs (including subcontractors' development and implementation costs). (See paragraph (g).)

(4) "Value Engineering Change Proposal (VECP)" means a proposal that:

(i) requires a change to this, the instant contract, to implement; and

(ii) results in reducing the contract price or estimated cost without impairing essential functions or characteristics, *provided* that it does not involve a change in deliverable end-item quantities only.

(c) *VECP Preparation.* As a minimum, the Contractor shall include the information described in (1) through (6) in each VECP. If the proposed change affects contractually required configuration management procedures, the instructions in the procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for both the affected portions of the existing contract requirement and the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (g). The Contractor shall also include a description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(4) A projection of any effects the proposed change would have on collateral costs to the agency.

(5) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(6) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submissions.*

(1) The Contractor shall submit VECPs to the Resident Engineer at the worksite, with a copy to the Contracting Officer. The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required because of extenuating circumstances, the Contractor shall be notified within the 45-day period and provided the reason for the delay and the expected date of the Contracting Officer's decision. VECPs shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall provide the Contractor written notification fully explaining the reasons for rejection. The Contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(e) *Acceptance.* Any VECP may be accepted in whole or in part by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept all or part of any VECP shall be final and not subject to the Disputes clause.

(f) *Sharing.*

(1) Rates. The Contractor's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by 55 percent for fixed-price contracts and 25 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to:

(i) accept the VECP;

(ii) reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) provide the Contractor's share of savings by adding the amount calculated in (f)(1) to the contract price or fee.

(g) *Subcontracts.* The Contractor shall include appropriate VE clauses in any subcontract of $50,000 or more and may include them in subcontracts of lesser value. To compute any adjustment in the contract price under paragraph (f), the Contractor's VECP development and implementation costs shall include any subcontractor's development and implementation costs that clearly result from the VECP, but shall exclude any VE incentive payments to subcontractors. The Contractor may choose any

arrangement for subcontractor VE incentive payments, *provided* that these payments are not made from the Government's share of the savings resulting from the VECP.

(h) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

> "These data, furnished under the Value Engineering Incentive--Construction clause of Contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data.

(End of clause)

7-602.51 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-602.52 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-602.53 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-602.54 *Shop Drawings.*

(a) Insert the following clause, with the appropriate additions in (b) and (c) below.

SHOP DRAWINGS (1976 OCT)

(a) The term "*shop drawings*" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid, as well as other information reasonably available to the purchasing activity CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall (i) include in his bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of clause)

7-2003.11 *Evaluation of Options.*

(a) In accordance with 1-1504(b), insert a provision substantially similar to:

EVALUATION OF OPTIONS

If the Government elects to exercise an option simultaneously with award, bids or proposals will be evaluated for purposes of award on the basis of the total price for the basic quantity and the option quantity exercised with award.

(End of provision)

(b) In accordance with 1-1504(c), insert a provision substantially similar to:

EVALUATION OF OPTIONS

A. Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. Evaluation of options will not obligate the Government to exercise the option or options.

B. Any bid or proposal which is materially unbalanced as to prices for basic and option quantities may be rejected as non-responsive. An unbalanced bid or proposal is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

(c) In accordance with 1-1504(d), insert the following provision.

EVALUATION OF OPTIONS (1974 APR)

A. Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. The offeror's target cost for the basic and option quantities will be deemed to be the price of the basic and option quantities for purposes of evaluation. Evaluation of options will not obligate the Government to exercise the option or options.

B. Any bid or proposal which is materially unbalanced as to prices for basic and option quantities may be rejected as non-responsive. An unbalanced bid or proposal is one which is based on

prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

7-2003.12 *Affiliated Bidders.* In accordance with 2-201(a)Sec.K(ii) or 2-201(b)(xvii), insert the following clause.

AFFILIATED BIDDERS (1974 APR)

(a) Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both.

(b) Each bidder shall submit with his bid an affidavit containing information as follows:

(i) whether the bidder has any affiliates;

(ii) the names and addresses of all affiliates of the bidder; and

(iii) the names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of his affiliates, and whether as common officers, directors, stockholders holding controlling interest, or otherwise.

(End of clause)

7-2003.13 *Preference for Labor Surplus Area Concerns.* In accordance with 2-201(a)Sec.K(iii) or 3-501(b)(3)Sec.K(vii), insert the following clause.

PREFERENCE FOR LABOR SURPLUS AREA CONCERNS (1978 JUN)

This procurement is not set aside for labor surplus area concerns. However, the offeror's status as such a concern may affect entitlement to award in case of tie offers or offer evaluation in accordance with the Buy American clause of this solicitation. In order to have his entitlement to a preference determined if those circumstances should apply, the offeror must identify below the labor surplus area in which the costs he will incur on account of manufacturing or production (by himself or his first-tier subcontractors) amount to more than fifty percent (50%) of the contract price.

.....

.....

Failure to identify the locations as specified above will preclude consideration of the offeror as a labor surplus area concern. Offeror agrees that if, as a labor surplus area concern, he is awarded a contract for which he would not have qualified in the absence of such status, he will perform the contract or cause it to be performed, in accordance with the obligations which such status entails.

(End of clause)

7-2003.14 *Equal Opportunity*

(a) *Pre-Award Compliance Review.* Each solicitation, (excluding construction) written or oral, for non-exempt contracts estimated to be for $1,000,000 or more shall advise bidders or offerors that prior to the award of a contract the

proposed contractor and his known first-tier subcontractors with proposed subcontracts of $1,000,000 or more shall be subject to an EEO compliance review as follows:

PRE-AWARD ON SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (1970 AUG)

In accordance with regulations of the Office of Federal Contract Compliance, 41 CFR 60.1, effective 1 July 1968, an award in the amount of $1,000,000 or more will not be made under this solicitation unless the bidder and each of his known first-tier subcontractors (to whom he intends to award a subcontract of $1,000,000 or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

(b) *Representations.* Insert the following provisions as applicable.

(1) When not contained on the solicitation form, the following:

7-2003.14(b)(1)(A)

(A) Certification of Nonsegregated Facilities

CERTIFICATION OF NONSEGREGATED FACILITIES (1970 AUG)

(Applicable to contracts, subcontracts, and to agreements with applicants who are themselves performing Federally assisted construction contracts, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause). By the submission of this bid, the bidder, offeror, applicant, or subcontracter certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(End of provision)

7-2003.14(b)(1)(B)

(B) Previous Contracts and Compliance Reports.

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (1973 APR)

The offeror represents that he [] has, [] has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in Section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114; that he [] has, [] has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (*The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.*)

7-2003.14(b)(2)

(2) Except for construction contracts, include the following provision when the contract includes the Equal Opportunity clause, if the provision is not already included on the solicitation form:

AFFIRMATIVE ACTION COMPLIANCE (1979 SEP)

The bidder (or offeror) represents that (1) he ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) or (2) he ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(End of provision)

(c) *Foreign Employment.* Insert the following clause in all nonexempt (see 12-808) solicitations when a contractor is required to perform in or on behalf of a foreign country.

NOTIFICATION OF VISA DENIAL (1978 SEP)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States on the basis that such individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). Therefore, the Contractor agrees to notify the Department of State, Washington, D. C., Attention: Director, Bureau of Politico-Military Affairs, and the Director, OFCCP, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract and it believes such denial is attributable to race, religion, sex, or national origin of the employee or potential employee.

(End of provision)

(d) *Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.* In accordance with 12-807.1 regarding affirmative action compliance requirements, insert the following provisions in all applicable solicitations involving construction in excess of $10,000. Follow this provision's parenthetical instructions by inserting the applicable construction trade(s), percentage goals and geographical description of the covered area as provided in Departmental instructions.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (1978 SEP)

(a) The Offeror's or Bidder's attention is called to the "Equal Opportunity" and the "Affirmative Action Compliance Requirements for Construction" clauses set forth herein.

(b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows.

.....

Timetables —	— Goals for minority participation for each trade	Goals for female participation in each trade
	.....	
	(Insert goals for each year)	(Insert goals for each year)

.....

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity clause, specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction" and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the Director, OFCCP within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor, employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

(d) As used in this Notice, and in the contract resulting from this Solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any.)

(End of Provision)

7-2003.15 *Patents - Government Licensee.* In accordance with 2-201(a)Sec.K(ix), 2-201(b)(xxviii), 3-501(b)(3)Sec.K(xvii), or 3-501(c)(xliv) as appropriate, insert the following provision.

PATENTS - GOVERNMENT LICENSEE (1974 APR)

The Government is obligated to pay a royalty applicable to the proposed procurement because of a license agreement between the Government and the patent owner. The patent number is ..... and the royalty rate is ..... If the offeror is the owner of, or a licensee under, the patent, he shall indicate below:

( ) Owner
( ) Licensee

If an offeror does not indicate that he is the owner or a licensee of the patent, his offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision)

7-2003.16 *Guaranteed Maximum Shipping Weights and Dimensions.* In accordance with 2-201(a)Sec.K(x), insert the following provision.

GUARANTEED MAXIMUM SHIPPING WEIGHTS AND DIMENSIONS.

Each bid (or proposal) will be evaluated to the destination specified by adding to the f.o.b. origin price all transportation costs to said destination. The guaranteed maximum shipping weights and dimensions of the supplies are required for determination of transportation costs. The bidder (or offeror) is requested to state as part of his offer the weights and dimensions. If separate containers are to be banded and/or skidded into a single shipping unit, details must be described. If delivered supplies exceed the guaranteed maximum shipping weights or dimensions, the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on bidder's (or offeror's) guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for bid (or proposal) evaluation purposes based on correct shipping data.

OMITTED from page 7:502

If the bidder (or offeror) fails to state his guaranteed maximum shipping weight and dimensions for the supplies as requested, the Government will use the estimated weights and dimensions below for evaluation; and the Contractor agrees this will be the basis for any reduction in contract prices as provided in this clause. The Government's estimated weights (and dimensions, if applicable) are as follows: ....

(End of provision)

7-2003.17 *Freight Classification Description.* In accordance with 2-201(a)Sec.K(xi), insert the following provision.

FREIGHT CLASSIFICATION DESCRIPTION (1968 JUN)

Bidders (or offerors) are requested to indicate, below, the full Uniform Freight Classification (rail) description, or the National Motor Freight Classification description applicable to the supplies, the same as bidder (offeror) uses for commercial shipment. This description should include the packing of the commodity (box, crate, bundle, loose, setup, knocked down, compressed, unwrapped, etc.) the container material (fiberboard, wooden, etc.), unusual shipping dimensions, and other conditions affecting traffic descriptions. The Government will use these descriptions as well as other information available to it to determine the classification description most appropriate and advantageous to the Government. Bidder (offeror) understands that shipments on any f.o.b. origin contract awarded, as a result of this solicitation, will be made in conformity with the shipping classification description specified by the Government, which may be different from the classification description furnished below.

FOR FREIGHT CLASSIFICATION PURPOSES, BIDDER (OR OFFEROR) DESCRIBES THIS COMMODITY AS .....

(End of provision)

7-2003.18 *Transportation Transit Privilege Credits.* In accordance with 2-201(a)Sec.K(xii), insert the following provision.

TRANSPORTATION TRANSIT PRIVILEGE CREDITS (1968 JUN)

If the bidder (offeror) has established with regulated common carriers transit privileges which can be applied to the supplies when shipped from the original source, bidder (offeror) is invited to offer to utilize such credits to ship the supplies to the designated Government destinations under commercial bills of lading, paying all remaining transportation charges connected therewith, subject to reimbursement by the Government in an amount equal to the remaining charges but not exceeding the amount quoted by the bidder (offeror) below. Such shipments under paid commercial bills of lading will move for the account of and at the risk of the Government, after loading on carrier's equipment and acceptance by the carrier (unless, pursuant to the "Changes" clause, the office administering the contract directs use of Government bills of lading). The amount quoted below by the bidder (offeror) represents the transportation costs, in cents per 100 lb. (freight rate) for full carload/truckload shipments of the supplies from bidder's (offeror's) original source via his transit plant or point to the Government destination(s) listed below by the bidder (offeror), including the carrier's transit privilege, charge, less the applicable transit credit (*i.e.*, the amount (rate) initially paid to the carrier for shipment from original source to bidder's transit plant or point). The rate per CWT quoted will be used by the Government to evaluate the offered f.o.b. origin price unless a lower rate is applicable on the date of bid opening (or closing date specified for receipt of proposals). To have his bid (offer) evaluated on this basis, bidder (offeror) must insert below the remaining transportation charges which he agrees to pay, including any transit charges, and which are subject to reimbursement by the Government, as explained in this provision, to destinations listed in the Schedule as follows:

RATE PER CWT IN CENTS .....

TO DESTINATION .....

(End of provision)

7-2003.19 *FOB Origin (With Differentials).* In accordance with 2-201(a)Sec. K(xiii), insert the following provision.

F.O.B. ORIGIN (WITH DIFFERENTIALS)

Notwithstanding the f.o.b. origin delivery terms set forth in the "F.O.B. Origin" clause of the contract, it may be advantageous to the bidder (or offeror) to submit f.o.b. origin prices in the Schedule which include only the lowest cost to the Contractor of loading for shipment at his plant or most favorable shipping point. The cost beyond such plant or point of bringing to the place of delivery and loading, blocking, and bracing on the type vehicle specified by the Government at the time of shipment may exceed the bidder's (offeror's) lowest cost when he ships for his own account. Accordingly, bidders (or offerors) may indicate below a differential which, as explained below, may be added to the offered price, such differential to be expressed as a rate in cents for each 100 pounds (CWT) of the supplies for one or more of the options, under the clause entitled "F.O.B. Origin," which the Government may specify at the time of shipment. Such differential(s), if specified below, will be considered in the evaluation of bids (or proposals) to determine the lowest overall cost to the Government. If, at the time of shipment, the Government specifies (normally on a Government bill of lading) a mode of transportation, type of vehicle, or place of delivery for which the bidder (or offeror) has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight on the Government bill of lading), as a separate reimbursable item on his invoice for the supplies. Under this clause (F.O.B. Origin (With Differentials)), the Government shall have the option of performing or arranging at its own expense any transportation from Contractor's shipping plant or point to carrier's facility at the time of shipment and, whenever this option is exercised, no reimbursement shall be made by the Government based on a quoted differential. Bidder's (or offeror's) differential(s), if any, in cents for each 100 pounds for optional mode of transportation, types of vehicle, transportation within a mode, or place of delivery, specified by the Government at the time of shipment, and not included in the f.o.b. origin price indicated in the Schedule by the bidder (or offeror), is (are) as follows:

..... (*carload, truckload, less-load. wharf, flatcar, driveway, etc.*)

(End of provision)

7-2003.20 *Evaluation of Export Bids (Or Proposals).* In accordance with 2-201(a)Sec. K(xiv), insert the following provision.

EVALUATION OF EXPORT BIDS (OR PROPOSALS) (1968 JUN)

A. *Port Handling and Ocean Charges.* In evaluating bids (or proposals), port handling and ocean charges on file and published by the Military Traffic Management and Terminal Service as of the date of bid opening (or the closing date specified for receipt of proposals) and effective for the date of the expected initial shipment will be used.

B. *F.O.B. Origin, Transportation Under Government Bill of Lading.*

(1) Bids (or proposals) will be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the f.o.b. origin price of the item, will be the inland transportation costs from the point of origin in the United States to the port of loading, port handling charges at the port of loading, and the ocean shipping costs from the United States port of loading to the overseas port of discharge (see D below). The Government may designate the mode of routing of shipment and may load from other than those ports specified for evaluation purposes.

(2) Bids (or proposals) will be evaluated on the basis of shipment through one of the ports set forth in paragraph D below, to the overseas port of discharge. Evaluation will be made on the basis of shipment through the port that will result in the lowest cost to the Government.

Ports of loading will be considered as destinations within the meaning of the term "f.o.b. destination" as that term is used in the "F.O.B. Origin" clause of this contract.

C. *F.O.B. Port of Loading With Inspection and Acceptance at Origin.*

(1) Bids (or proposals) will be evaluated on the basis of the lowest laid down cost to the Government at the overseas port of discharge via methods compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the price to the United States port of loading (see (2) below), will be the port handling charges at the port of loading and the ocean shipping cost from the port of loading to the overseas port of discharge (see D below).

(2) Unless bids (or offers) are applicable only to f.o.b. origin delivery under Government bills of lading (see B above), bidders (or offerors) must designate, below, at least one of the ports of loading listed in paragraph D below, as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the bid (or offer) nonresponsive.

PLACE OF DELIVERY: .....

(*Insert at least one of the ports listed in paragraph D below.*)

D. *Ports of Loading for Bid (or Proposal) Evaluation.* Ports to be used by the Government in evaluating bids (or proposals) are as follows:

..... (*Ports*)

E. *Ports of Loading Nominated by Bidder (Offeror).* The above named ports of loading listed in D above are considered by the Government to be appropriate for this solicitation due to their compatibility with methods and facilities required to handle the cargo and types of vessels and to meet the required overseas delivery dates. Notwithstanding the foregoing, bidders (or offerors) may nominate additional ports of loading which the bidder (offeror) considers to be more favorable to the Government. The Government may disregard such nominated port(s) if, after considering the quantity and nature of the supplies concerned, the requisite cargo handling capability, the available sailings on U.S. Flag vessels, and other pertinent transportation factors, it determines that use of the nominated port(s) is not compatible with the

required overseas delivery date. United States Great Lakes ports of loading may be considered in the evaluation of bids (or offers) only for those items scheduled herein for delivery during the ice-free or navigable period as proclaimed by the authorities of the St. Lawrence Seaway (normal period is between 15 April and 30 November annually). All ports named, including those nominated by bidders (or offerors), and determined to be eligible as provided herein, will be considered in evaluating all bids (or proposals) received in order to establish the lowest laid down cost to the Government at the overseas port of discharge. All determinations will be based on availability of ocean services by United States Flag vessels only. Additional U.S. port(s) of loading nominated by bidder (or offeror), if any: .....

Bidder (or offeror) will indicate whether price(s) is (are) based on:

( ) Paragraph B, f.o.b. origin, transportation by GBL to port listed in D;
( ) Paragraph C, f.o.b. destination (*i.e.*, a port listed in D);
( ) Paragraph E, f.o.b. origin, transportation by GBL to port nominated in E; and/or
( ) Paragraph E, f.o.b. destination (*i.e.*, a port nominated in E).

(End of provision)

7-2003.21 *Eligibility for Preference as a Labor Surplus Concern.* In accordance with 2-201(a)Sec.K(xv) or 3-501(b)(3)Sec.K(xviii), insert the following clause.

ELIGIBILITY FOR PREFERENCE AS A LABOR SURPLUS CONCERN (1978 JUN)

Each offeror desiring to be considered for award as a labor surplus area (LSA) concern on the set-aside portion of this procurement, specified elsewhere in the schedule, shall indicate below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price

Name of Company:
Street Address:
City/County:
State:

(If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price.)

CAUTION: Failure to list the location of manufacture or production and the percentage, if required, of cost to be incurred at each location will preclude consideration of the offeror as a LSA concern.

(End of clause)

7-2003.22 *Rated or Authorized Controlled Material Orders.* Solicitations which will result in the placement of rated orders or authorized controlled material orders (see 1-307) shall contain the following provision.

RATED OR AUTHORIZED CONTROLLED MATERIAL ORDERS (1974 APR)

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a [] DX — rating; [] DO — rating; [] DMS allotment number — (*Contracting Officer check appropriate box or boxes*) In accordance with the provisions of DPS Regulation 1 and/or DMS Regulation 1.

(End of provision)

7-2003.23 *Evaluation Factors for Award.*

(a) *Evaluation of Bids Subject to Economic Price Adjustment.* In accordance with 2-201(a)Sec.M(ii), insert the following provision.

EVALUATION OF BIDS SUBJECT TO ECONOMIC PRICE ADJUSTMENT (1974 MAR)

Notwithstanding the provisions of the clause entitled "....", bids shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Bids which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis but any resultant award will be made at the lower ceiling. Bids which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

**Insert the title of the clause providing for economic price adjustment.*

(b) *Evaluation of Multiple Awards.* In accordance with 2-201(a)Sec.M(iii), insert the following provision.

EVALUATION OF BIDS FOR MULTIPLE AWARDS (1975 OCT)

In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $100 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate price to the Government, including such administrative costs.

(End of provision)

(c) *Transit Arrangements.* In accordance with 2-201(a)Sec.M(v), insert the following provision.

TRANSIT ARRANGEMENTS (1968 JUN)

The lowest appropriate common carrier transportation costs, including through transit rates and charges where applicable, from bidder's (or offeror's) shipping points, via the transit point, to the ultimate destination will be used in evaluating bids (or proposals). Transit point(s) ..... Destination(s) .....

(End of provision)

(d) *Evaluation—F.O.B. Origin.* In accordance with 2-201(a)Sec. M(vi), insert the following provision.

EVALUATION—F.O.B. ORIGIN (1974 APR)

Land methods of transportation by regulated common carrier are normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating bids (or proposals), only such methods will be considered in establishing the cost of transportation between bidder's (or offeror's) shipping point and destination (tentative or firm, whichever is applicable), in the United States (excluding Alaska and Hawaii). Such transportation cost will be added to the bid (or proposal) price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to utilize any other means of transportation or any other destination at the time of shipment.

(End of provision)

7-2003.24 *Evaluation Factors for Award.*

(a) *Destination Unknown.* In accordance with 2-201(a)Sec. M(vii), insert the following provision.

DESTINATION UNKNOWN (1968 JUN)

For the purpose of evaluating bids (or proposals), and for no other purpose, the final destination(s) for the supplies will be considered to be as follows:

.....

(End of provision)

(b) *F.O.B. Origin—Carload and Truckload Shipments.* In accordance with 2-201(a)Sec. M (viii), insert the following provision.

F.O.B. ORIGIN—CARLOAD AND TRUCKLOAD SHIPMENTS (1968 JUN)

The Contractor agrees that shipment shall be made in carload or truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed, in writing, by the Contracting Officer. For bid (or proposal) evaluation purposes, the agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of the date of bid opening (or the closing date specified for receipt of proposals. For purposes of actual delivery, the agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published as of date of shipment. If the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight used for bid (or proposal) evaluation, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements.

(End of provision)

(c) *Shipping Point(s) Used in Evaluation of F.O.B. Origin Bids (or Proposals).* In accordance with 2-201(a)Sec. M(ix), insert the following provision.

SHIPPING POINT(S) USED IN EVALUATION OF F.O.B. ORIGIN BIDS (OR PROPOSALS) (1968 JUN)

A. If more than one shipping point or plant is designated by the bidder (or offeror) and he fails to indicate the quantity per shipping point or plant prior to bid opening (or the closing date specified for receipt of proposals), the Government will evaluate the bid (or proposal) on the basis of delivery of the entire quantity from the point or plant where cost of transportation is most favorable to the Government.

B. If the bidder (or offeror), prior to bid opening (or the closing date specified for receipt of proposals), fails to indicate any shipping point or plant, the Government will evaluate the bid (or proposal) on the basis of delivery from the plant at which the contract will be performed, as indicated in the bid or proposal. If no such plant is indicated in the bid (or proposal), then the bid (or proposal) will be evaluated on the basis of delivery from the Contractor's business address indicated on Standard Form 33 or other bid (proposal) form.

C. If the bidder (or offeror) utilizes a shipping point other than that which has been used by the Government as a basis for the evaluation of bids (or proposals), any increase of transportation costs shall be borne by the Contractor and any savings shall revert to the Government.

(End of provision)

(d) *FOB Origin and/or Destination.* In accordance with 2-201(a)Sec. M(x), insert the following provision.

F.O.B. ORIGIN AND/OR DESTINATION (1968 JUN)

Bids (Offers) are invited on the basis of both, f.o.b. origin and f.o.b. destination, and the Government will award on such basis as the Contracting Officer determines to be most advantageous to the Government. A bid (An offer) on the basis of f.o.b. origin only or f.o.b. destination only is acceptable, but will be evaluated only on the basis submitted.

(End of provision)

7-2003.25 *Bid Guarantee.* The following provision shall be included in solicitations in accordance with 10-102.4.

BID GUARANTEE (1964 JUN)

Where a bid guarantee is required by the invitation for bids, failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

A bid guarantee shall be in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (a) to unsuccessful bidders as soon as practicable after the opening of bids, and (b) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

If the successful bidder, upon acceptance of his bid by the Government within the period specified therein for acceptance (sixty days if no period is specified) fails to execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (ten days if no period is specified) after receipt of the forms by him, his contract may be terminated for default. In such event he shall be liable for any cost of procuring the work which exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

(End of provision)

7-2003.26 *Reserved.*

7-2003.27 *Cost Limitation.* In accordance with 2-201(b)(xxx) or 3-501(c)(xxv), insert the following provision.

COST LIMITATION (1974 APR)

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (ii) exceed the cost limitations unless such limitations have been waived by the Assistant Secretary of Defense (Installations and Logistics) prior to award.

(End of provision)

7-2003.28 *Additive or Deductive Items.* In accordance with 2-201(b)(xli), insert a provision substantially as follows.

ADDITIVE OR DEDUCTIVE ITEMS (1968 APR)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000 and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid and any combination of his additive or deductive bid for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items

(End of provision)

7-2003.29 *Telegraphic Bids.* In accordance with 2-202.2, and 3-501(b)(3)Sec.L(v), insert the following provision.

TELEGRAPHIC BIDS (1964 MAR)

Telegraphic bids may be submitted in response to this Invitation for Bids. Telegraphic bids must be received in this office prior to the time specified for opening of bids. Such bids must specifically refer to this Invitation for Bid, must include the item or sub-items, quantities and unit prices for which the bid is submitted and the time and place of delivery; and must contain all the representations and other information required by the Invitation for Bids together with a statement that the bidder agrees to all the terms, conditions and provisions of the invitation. Failure to furnish, in the telegraphic bid, the representations and information required by the Invitation for Bids may necessitate rejection of the bid. Signed copies of the Invitation for Bids must be furnished in confirmation of the telegraphic bids

(End of provision)

This provision may be modified for negotiated procurements.

7-2003.37 *Step Two of Two-Step Formal Advertising.* In accordance with 2-503.2(ii), insert the following provision.

STEP TWO OF TWO-STEP FORMAL ADVERTISING (1974 APR)

THIS INVITATION FOR BIDS IS ISSUED PURSUANT TO TWO-STEP FORMAL ADVERTISING IN PART 5 OF SECTION II OF THE ARMED SERVICES PROCUREMENT REGULATION.

BIDS WILL BE ACCEPTED AND CONSIDERED ONLY FROM THOSE FIRMS WHO HAVE SUBMITTED ACCEPTABLE TECHNICAL PROPOSALS PURSUANT TO THE FIRST STEP OF SUCH PROCEDURES, AS INITIATED BY ..... (*Identify the Request for Technical Proposals*). ANY BIDDER WHO HAS SUBMITTED MULTIPLE TECHNICAL PROPOSALS IN THE FIRST STEP OF THIS TWO-STEP PROCUREMENT MAY SUBMIT A SEPARATE BID COVERING EACH TECHNICAL PROPOSAL WHICH HAS BEEN DETERMINED ACCEPTABLE BY THE GOVERNMENT.

(End of provision)

7-2003.38 *Notice of Possible Standardization.* In accordance with 3-213.4, insert the following.

NOTICE OF POSSIBLE STANDARDIZATION (1975 OCT)

It is possible that the products procured through this action may be established as standard and, at the option of the (..... *INSERT PROCURING DEPARTMENT*), subsequent procurements may be negotiated under authority of paragraph 3-213 of the Armed Services Procurement Regulation.

(End of provision)

7-2003.39 *Site Visit.* In accordance with 2-201(a)Sec.L(xii) or 3-501(b)(3)Sec.L(xiv), insert the following provision.

SITE VISIT (1969 OCT)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will a failure to inspect the site constitute grounds for a claim after award of the contract.

(End of provision)

7-2003.40 *Unnecessarily Elaborate Contractor's Proposals.* In accordance with 3-501(b)(3)Sec.L(xxii) or 3-501(c)(xxviii), insert the following provision.

UNNECESSARILY ELABORATE CONTRACTOR'S PROPOSALS/QUOTATIONS (1969 OCT)

Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal or quotation are not desired and may be construed as an indication of the offeror's or quoter's lack of cost consciousness. Elaborate art work, expensive paper and bindings and expensive visual and other presentation aids are neither necessary nor wanted.

(End of provision)

7-2003.41 *Order of Precedence.* In accordance with 2-201(a)Sec.L(iii) or 3-501(b)(3)Sec.L(iii), insert the following provision.

ORDER OF PRECEDENCE (1973 APR)

In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the Specifications); (b) Terms and Conditions of the solicitation, if any; (c) General Provisions; (d) other provisions of the contract, when attached or incorporated by reference; and (e) the Specifications.

(End of provision)

7-2003.42 *Royalty Information.* In accordance with 9-110(a)(3), insert the following provision.

ROYALTY INFORMATION (1961 AUG)

When the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be furnished with offer, proposal, or quotation on each separate item of royalty or license fee:

(i) name and address of licensor;
(ii) date of license agreement;
(iii) patent numbers, patent application serial numbers or other basis on which the royalty is payable;
(iv) brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
(v) percentage or dollar rate of royalty per unit;
(vi) unit price of contract item;
(vii) number of units; and
(viii) total dollar amount of royalties.

DD Form 783, Royalty Report, is approved for use in furnishing the above information. In addition, if specifically requested by the Contracting Officer prior to execution of the contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished

(End of provision)

7-2003.43 *Notice of Cost/Schedule Control Systems.* In accordance with 1-331(h), insert the following provision.

NOTICE OF COST/SCHEDULE CONTROL SYSTEMS (1974 APR)

(a) The offeror shall submit a comprehensive plan for compliance with the attached criteria (DODI 7000.2 Performance Measurement for Selected Acquisitions) for the internal Cost/Schedule Control Systems which are and/or will be operational for any contract resulting from this solicitation, and which includes the C/SCSC clause set forth in ASPR 7-104.87. The offeror shall identify his existing management systems separately from proposed modifications to meet the criteria. The plan shall:

(i) describe the management systems and their application in all major functional cost areas such as engineering, manufacturing and tooling, as related to development of the work breakdown structure, planning, budgeting, scheduling, work authorization, cost accumulation, measurement and reporting of cost and schedule performance, variance analysis, and baseline control;
(ii) describe compliance with each of the criteria, preferably by cross-referencing appropriate elements in the description of systems with the items in the checklist for C/SCSC contained in AFSCP/AFLCP 173-5, DARCOM-P 715-5, NAVMAT P-5240, Cost/Schedule Control Systems Criteria Joint Implementation Guide;
(iii) identify the major subcontractors, or major subcontracted effort in the event major subcontractors have not been selected, planned for application of the criteria.
(iv) describe the proposed procedure for administration of the criteria as applied to subcontractors.

agrees to furnish clear and convincing evidence that the data which will be so identified comes within the definition of limited rights data.

(c) The listing of a data item in paragraph (a) above does not mean that the Government considers such item to come within the definition of limited rights data.

(End of provision)

7-2003.62 *Options to Award and Pay in United States Owned Foreign Currency.* In accordance with 6-1104, insert the following provision.

OPTION TO AWARD AND PAY IN FOREIGN CURRENCY (1974 APR)

(a) Offerors are required to state their price in United States dollars. Such price may also be stated wholly in the currency of the countries listed in the Schedule, or in a combination of United States dollars and the currency of any of the listed countries.

(b) Offerors shall state separately the United States dollar content, if any, in United States dollars. The term "United States dollar content" means the United States dollar cost to an offeror for United States end products or services (including costs of transportation furnished by United States-flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

(c) The Contracting Officer reserves the right to award to that responsive offeror willing to accept payment in whole or in part in a currency of any of the listed countries and whose offer is considered the most advantageous to the United States Government, even though the total price of the accepted offer may be more than the price of an offer received in United States dollars.

(End of clause)

7-2003.63 *Progress Payments Exclusively for Small Business.* In accordance with E-504.3, insert the following provision.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENTS EXCLUSIVELY FOR SMALL BUSINESS (1974 APR)

The Progress Payments clause will be available to Small Business concerns only, and will not be included for contractors who are not Small Business concerns.

(End of provision)

7-2003.64 *Progress Payments.* In accordance with E-504.4, insert the following notice.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENTS* (1974 APR)

The need for progress payments conforming to regulations (Appendix E, Armed Services Procurement Regulation) will not be considered as a handicap or adverse factor in the award of contracts. Authorized progress payments will not be a factor for evaluation of bids. The appropriate "Progress Payment" clause attached hereto will be included in the contract awarded in the manner herein provided, however, the clause shall be inoperative during the time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs. For Small Business concerns the clause designated "Progress Payments for Small Business Concerns" (7-104.35(b)) shall be used for such Contractors. For Contractors who are not Small Business concerns, the clause designated "Progress Payments for Other Than Small Business Concerns" (7-104.35(a)) shall be used.

(End of notice)

*Do not use the last sentence of this notice for procurements mentioned in E-504.2 and E-504.3.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-2003.65 *Solicitation of Bids and Proposals.* The following provision shall be included in all solicitations for construction in the United States except when Standard Form 19 is used.

NOTICE REGARDING BUY AMERICAN ACT (1970 SEP)

The Buy American Act (41 U.S.C. 10a–10d) generally requires that only domestic construction material be used in the performance of this contract. Exception from the Buy American Act shall be permitted only in the case of nonavailability of domestic construction materials. A bid or proposal offering nondomestic construction material will not be accepted unless specifically approved by the Government. When a bidder or offeror proposes to furnish nondomestic construction material, his bid or proposal must set forth an itemization of the quantity, unit price, and intended use of each item of such nondomestic construction material. When offering nondomestic construction material pursuant to this paragraph, bids or proposals may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable under this paragraph will cause rejection of the entire bid.

(End of provision)

7-2003.66 *Requirement for Technical Data Certification.* In accordance with 3-501(b)(3)Sec.K(xii), insert the following provision.

REQUIREMENT FOR TECHNICAL DATA CERTIFICATION (1974 APR)

The offeror shall submit with his offer a certification as to whether he has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in his offer; if so, he shall identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(End of provision)

7-2003.67 *Cost Accounting Standards*

(a) *Disclosure Statement - Cost Accounting Practices and Certification.* In accordance with 3-1203 (a) insert the following solicitation provision:

DISCLOSURE STATEMENT - COST ACCOUNTING PRACTICES AND CERTIFICATION (1978 MAR)

Any contract in excess of $100,000 resulting from this solicitation except (i) when the price negotiated is based on: (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulations; (ii) contracts awarded to small business concerns (as defined in DAR 1-701.1); or (iii) contracts which are otherwise exempt (see 4 CFR 331.30(b)) shall be subject to the requirements of the Cost Accounting Standards Board. Any offeror submitting a proposal, which, if accepted, will result in a contract subject to the requirements of the Cost Accounting Standards Board, must, as a condition of contracting, submit a Disclosure Statement as required by regulations of the Board. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation (see (I) below) unless (i) the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards exceeding the

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(b) *Cost Accounting Standards - Exemption for Contracts of $500,000 or Less.* In accordance with 3-1204.1(a)(vii)(A), insert the following provision:

COST ACCOUNTING STANDARDS - EXEMPTION FOR CONTRACTS OF $500,000 OR LESS (1978 MAR)

If this proposal is expected to result in the award of a contract of $500,000 or less, the offeror shall indicate whether the exemption to the Cost Accounting Standards clause (7-104.83(a)(1) under the provisions of 4 CFR 331.30(b)(8) is claimed. Failure to check the box below shall mean that the resultant contract is subject to the Cost Accounting Standards clause or that the offeror elects to comply with such clause.

( ) The offer hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 4 CFR 331.30(b)(8) and certifies that he has received notification of final acceptance of all deliverable items on (i) all prime contracts or subcontracts in excess of $500,000 which contain the Cost Accounting Standards clause, and (ii) all prime contracts or subcontracts of $500,000 or less awarded after January 1, 1975 which contain the Cost Accounting Standards clause. The offeror further certifies he will immediately notify the Contracting Officer, in writing, in the event he is awarded any other contract or subcontract containing the Cost Accounting Standards clause subsequent to the date of this certificate but prior to the date of any award resulting from this proposal.

(End of provision)

(c) *Cost Accounting Standards - Exemption for Modified Contract Coverage.* In accordance with 3-1204.1(b), insert the following solicitation provision:

COST ACCOUNTING STANDARDS - ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE (1978 MAR)

If the offeror is eligible to use the modified provisions of 4 CFR 332 and elects to do so, he shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause (DAR 7-104.83(a)(2)) in lieu of the Cost Accounting Standards clause (7-104.83(a)(1)).

( ) The offeror hereby claims an exemption from the Cost Accounting Standards clause (DAR 7-104.83(a)(1)) under the provisions of 4 CFR 331.30(b)(2), and certifies that he is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause (DAR 7-104.83(a)(2)) because (i)

during his cost accounting period immediately preceding the period in which this proposal was submitted, he received less than $10 million in awards of CAS-covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of his total sales during that cost accounting period. The offeror further certifies that if his status changes prior to an award resulting from this proposal he will advise the contracting officer immediately.

CAUTION: Offerors may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a contract of $10 million or more or if, during their current cost accounting period, they have been awarded a single CAS-covered national defense prime contract or subcontract of $10 million or more.

(End of provision)

(d) In accordance with 3-1213(a), insert the following provision in all solicitations containing the clause in 7-2003.67(a).

ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS (1978 MAR)

The offeror shall indicate below whether award of the contemplated contract would require, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause (7-104.83(a)(1)), a change in his established cost accounting practices affecting existing contracts and subcontracts.

( ) YES ( ) NO

NOTE: If the offeror has checked "yes" above, and is awarded the contemplated contract, he will be required to comply with the *Administration of Cost Accounting Standards* clause (7-104.83(b)).

(End of provision)

7-2003.68 *Industrial Preparedness Production Planning.* In accordance with 3-501(b)(3)Sec.L(xxxii), insert the following provision:

INDUSTRIAL PREPAREDNESS PRODUCTION PLANNING (1974 AFR)

This solicitation includes an item for industrial planning in support of the Industrial Preparedness Production Planning program. Offerors are cautioned to carefully review Section E of the Schedule and the attached Industrial Preparedness Program Planning Exhibit. Failure to propose on the Industrial Preparedness Production Planning line item set forth in the Schedule may result in rejection of the proposal.

(End of provision)

7-2003.69 *Industrial Preparedness Production Planning.* In accordance with 2-201(a)Sec.L(xxiv), insert the following provision:

7-2003.80 *Woman-Owned Business.* In accordance with 2-201(a)Sec.K(xviii), 2-201(b)(lviii), or 3-501(b)(3)Sec.K(xxi), insert the following provision in all solicitations except those made outside the United States.

WOMAN-OWNED BUSINESS (1978 SEP)

The offeror represents that the firm submitting this offer ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management. For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, women-owned if this information is available.

(End of provision)

7-2003.81 *Percent Foreign Content.* In accordance with 2-201(a)Sec.K(xix), 2-201(b)(lix), or 3-501(b)(3)Sec.K(xxii), insert the following provision in all solicitations except those made outside the United States.

PERCENT FOREIGN CONTENT (1978 SEP)

Approximately ---------- percent of the proposed contract price represents foreign content or effort.

(End of provision)

7-2003.82 Recovered Material. The following certification shall be inserted in solicitations as required by 1-2500.5(b):

RECOVERED MATERIAL (1979 MAR)

The Contractor certifies by signing this bid/proposal/quotation that recovered materials, as defined in DAR 1-2500.4, will be used as required by the applicable specifications.

7-2003.83 *Bid/Proposal Certification - Wage and Price Standards.* In accordance with 1-341(f)(1), insert the following provision.

BID/PROPOSAL CERTIFICATION - WAGE AND PRICE STANDARDS (1979 SEP)

(Applicable to contracts in excess of $5 million, and indefinite delivery-type contracts under which cumulative orders are expected to exceed $5 million.)

(a) By submission of this bid or offer, the bidder or offeror certifies to be in compliance with the Wage and Price Standards issued by the Council on Wage and Price Stability (6 CFR Part 705, Appendix, and Part 706).

(b) The clause entitled "Contract Certification - Wage and Price Standards," set forth elsewhere in this solicitation, shall be incorporated in any resulting contract except when waived by the Secretary.

(End of provision)

7-2003.84 *Statement of Equivalent Rates for Federal Hires.* In accordance with 12-1005.2(b)(3), insert the following provision in all solicitations for the acquisition of services to which the clause at 7-1903.41(a) applies:

RATES FOR EQUIVALENT FEDERAL HIRES (1979 SEP)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this solicitation incorporates a statement of Federal employee classes, incorporating wages paid and fringe benefits provided to each class. These Federal classes are comparable to the service employee classes expected to be employed under the contract resulting from this acquisition. (THE STATEMENT IS FOR INFORMATION ONLY).

(End of provision)

7-2003.85 *SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA).* In accordance with 12-1005.2(b)(5), insert the following provision in all solicitations for the acquisition of services to which—

(i) the clause at 7-1903.41(a) applies;

(ii) the contract resulting from this solicitation succeeds an ongoing contract for substantially the same services;

(iii) the incumbent contractor has negotiated or is negotiating a CBA with some or all of its service employees; and

(iv) all applicable Department of Labor wage determinations have been requested but not received.

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (1979 SEP)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent contractor _____ and the _____(union). Copies of the agreement can be obtained from the Contracting Officer. Pursuant to DOL Regulation, 29 CFR 4.1c, the economic terms of that agreement (or any new CBA negotiated 10 or more days prior to the opening of bids, or the commencement of the contract in the case of negotiated contracts, exercise of options, or extensions) will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined, after a hearing pursuant to section 4(c) of the SCA, that they are substantially at variance with the wages prevailing in the area.

(End of provision)

7-2003.86 Reserved.
7-2003.87 Reserved.
7-2003.88 Reserved.
7-2003.89 Reserved.

7-2003.90 Data Universal Numbering System (DUNS) Number Reporting. In accordance with 2-201 and 3-501, insert the following provision.

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER REPORTING (1980 DEC)

In the block with its name and address, the offeror should supply the Data Universal Numbering System (DUNS) Number applicable to that name and address. The DUNS Number should be preceded by "DUNS:". If the offeror does not have a DUNS Number, it may obtain one from any Dun and Bradstreet branch office. No offeror should delay the submission of its offer pending receipt of its DUNS Number.

(End of provision)

TERMINATION OF CONTRACTS

Part 2—General Principles

8-200 Scope of Part. This Part deals with.

(i) the authority of contracting officers to terminate contracts in whole or in part (A) for the convenience of the Government; and (B) in the case of cost-reimbursement type contracts for default;

(ii) duties of the contractor and the contracting officer after issuance of the notice of termination;

(iii) general procedures for the settlement of terminated contracts; and

(iv) settlement agreements.

Part 3 sets forth additional principles applicable only to fixed-price type contracts. Part 4 sets forth additional principles applicable only to cost-reimbursement type contracts. Part 6 sets forth the principles applicable to the termination of fixed-price type contracts for default.

8-201 Authority of Contracting Officers.

(a) The authority of contracting officers to terminate contracts for convenience, and for default in the case of cost-reimbursement type contracts, and to enter into settlement agreements under this Regulation is usually found in the termination clause or other provisions of the contract.

(b) Contracts shall be terminated, whether for default or convenience, only when such action is in the best interest of the Government, as determined in accordance with this Regulation. When the PCO is aware that (i) the contractor will accept a no-cost settlement, (ii) Government property was not furnished, and (iii) there are no outstanding payments, claims, or other contractor obligations, the PCO shall effect a no-cost settlement agreement in lieu of issuing a notice of termination. Otherwise, a notice of termination should be issued; however, when the price of the undelivered balance of the contract is less than $1,000, a termination for convenience should normally not be effected but the contract be permitted to run to completion. If a notice of termination has been issued, negotiation of the settlement with the contractor, including a no-cost settlement if appropriate, shall be the responsibility of the termination contracting officer (see 8-206 and 8-210.4).

(c) Special consideration will be given to small business over large business concerns when terminating contracts for the convenience of the Government. When the same item is under contract with both large and small business concerns and it is necessary to terminate for convenience part, but not all, of the units still to be delivered, the decision as to which contract or contracts to terminate shall be made by the Chief of the Purchasing Office.

8-202 Prior Notification of Significant Contract Terminations.

(a) Prior Defense Department clearance of the information release is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor. Coordination of the timing of the notice to the contractor and release of information to Congress or the public is the responsibility of each Department through its liaison point designated in (d) below. In a labor surplus area a lesser number than 100 may be significant, and if so, such information release should be similarly cleared.

TERMINATION OF CONTRACTS

(b) The following information will be submitted to the appropriate Departmental liaison point:

(i) contract number, date, type of contract;

(ii) name of company;

(iii) nature of contract or end item;

(iv) the reasons for the termination;

(v) contract price of items terminated;

(vi) total number of contractor employees involved including the Government's estimate of the number who may be discharged;

(vii) statement of anticipated impact on the company and the community (identify); identify area labor category; whether contractor is large or small business, and include any known impact on hardcore disadvantage employment programs;

(viii) total number of subcontractors involved as well as the impact in this area, if known; and

(ix) draft (unclassified) of suggested press release of information.

(c) Clearance to release the information will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance to release, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required.

(d) The Departmental liaison points for prior clearance to release information on significant terminations are as follows:

Army — OSA, OCLL (SACLL), ASA (I&L) (copy)

Navy — Chief of Legislative Affairs (OLA-N)

Air Force — Hq. USAF (AFLGP)

Defense Supply Agency — DSAH-PC

Defense Communications Agency — Contract Management Division (Code 260)

Defense Nuclear Agency — Chief, Office of Procurement, OATR

Defense Mapping Agency — DMA/LO

(e) Liaison offices of Departments will act promptly on the request for clearance to release information (not later than two working days after receipt) to avoid the accrual of termination costs.

(f) This reporting requirement is assigned Report Control Symbol: DD (I&L) (AR) 1412.

8-203 Notice of Termination.

(a) *General.* Contracts shall be terminated for convenience, or for default only by a written notice to the contractor (see 8-801 and 16-701). When such notice is mailed, it shall be sent by certified mail return receipt requested. The written notice shall state:

(i) that the contract is being terminated for the convenience of the Government (or for default) pursuant to the contract provisions authorizing such termination;

(ii) the effective date of termination;

(iii) the extent of termination and, if a partial termination, the portion of the contract to be continued;

(iv) recommended actions to be taken by the contractor to minimize the impact on his personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force (see paragraph 7 of the notice in 8-801.2); and

(v) any special instructions (e.g., see 15-205.42(f)).

(b) *Distribution of Copies.* Simultaneously with issuance of the termination notice to the contractor a copy shall be sent to the contract administration office and to any known assignee, guarantor, or surety of the contractor.

(c) *Amendment of Termination Notice.* A notice of termination may be amended to provide for:

(i) the correction of mistakes in the notice, of a nonsubstantive nature,
(ii) addition of supplemental data or instructions, and
(iii) rescission of the notice when it has been determined that the items of work terminated had been completed or shipped prior to the contractor's receipt of the notice.

(d) *Reinstatement of Terminated Contracts.* The purchasing office may reinstate the terminated portion of a contract in whole or in part by an amendment to the notice of termination provided that it has been determined in writing that:

(i) circumstances clearly indicate a requirement for the terminated items; and
(ii) reinstatement is advantageous to the Government; *provided that* the written consent of the contractor is obtained to the reinstatement.

8-204 Methods of Settlement. Settlement of terminated cost-reimbursement type contracts and of fixed-price type contracts terminated for convenience may be effected by (i) negotiated agreement, (ii) determination by the TCO, (iii) in the case of cost-reimbursement type contracts, costing-out under vouchers using Standard Form 1034, or (iv) a combination of these methods. Every effort shall be made to reach a fair and prompt settlement with the contractor. The negotiated agreement is the most expeditious and most satisfactory method of settling termination claims and shall be used whenever feasible. Settlement by determination shall be used only when a termination claim cannot be settled by agreement.

8-205 Duties of Prime Contractor After Receipt of Notice of Termination. The contractor, after receipt of the notice of termination and except as otherwise directed by the TCO, must comply with the termination clause of the contract and the notice of termination which generally require, among other things, that the contractor:

(i) stop work immediately on the terminated portion of the contract and discontinue placing subcontracts thereunder;
(ii) terminate all subcontracts related to the terminated portion of the prime contract;
(iii) immediately advise the TCO of any special circumstances precluding the stoppage of work;
(iv) if the termination is partial, perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price with respect to the continued portion of the contract, supported by evidence of any increase in the cost thereof;
(v) take such action as may be necessary, or as the TCO may direct, to protect and preserve property in the possession of the contractor in which the Government has or may acquire an interest; and, to the extent directed by the TCO, deliver such property to the Government;

(vi) promptly notify the TCO in writing of any legal proceedings against the contractor growing out of any subcontract or other commitment related to the terminated portion of the contract;
(vii) settle all outstanding liabilities and all claims arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;
(viii) promptly submit his own settlement proposal (see 15-205.42), supported by appropriate schedules; and
(ix) dispose of any termination inventory, as directed or authorized by the TCO.

8-206 Duties of Termination Contracting Officer After Issuance of Notice of Termination.

(a) In accordance with the termination clause in the contract and with the notice of termination, the TCO shall, among other things:

(i) direct the action required of the prime contractor including the execution of a no-cost settlement agreement (see 8-210.4) if appropriate;
(ii) examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;
(iii) promptly negotiate settlement with the contractor and enter into a settlement agreement; and
(iv) to the extent that he is unable to negotiate settlement after due and diligent effort, promptly settle the contractor's claim by determination.

(b) To expedite settlement, the TCO shall seek assistance from specially qualified personnel (such as negotiating, legal, accounting, inspecting, engineering, and property disposal personnel) to:

(i) assist the TCO in dealings with the contractor;
(ii) render advice on legal and contractual matters;
(iii) conduct accounting reviews and render advice and assistance on accounting matters; and
(iv) perform the following functions with respect to the termination inventory—
(A) verify its existence;
(B) determine qualitative and quantitative allocability;
(C) make recommendations concerning serviceability and unserviceability;
(D) undertake necessary screening and redistribution; and
(E) assist the contractor in accomplishing other disposition.

(c) An initial conference shall be held with the contractor as promptly as possible to develop a definite program for effecting the settlement. Where appropriate in the judgment of the TCO, principal subcontractors should be present. The TCO shall prepare and place in the termination case file, a memorandum on the results of the conference. Topics discussed at the conference should include:

(i) general principles relating to the settlement of any termination claim, including obligations of the contractor under the termination clause of the contract;

(d) DD Form 831 (see 8-802.3, 16-702.4 and F-200.831) may be used when the total claim is less than $10,000 unless otherwise instructed by the TCO. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, must be consolidated wherever possible and must not be divided in such a way as to bring them below $10,000.

(e) The Schedule of Accounting Information, DD Form 546, must be submitted for each termination under a contract on which a claim for reimbursement of costs is made, except that the Schedule is not required when the Short Form Settlement Proposal, DD Form 831, is used. Although several interim proposals may be submitted, DD Form 546 need be submitted only once unless, subsequent to filing of the original form, major changes occur in the information contained therein.

8-307.2 *Bases for Settlement Proposals.*

(a) *Inventory Basis.* Use of the inventory basis for settlement proposals is preferred. Under this basis the contractor may claim only costs chargeable or allocable to the terminated portion of the contract, and the settlement proposal must itemize separately:

(i) at purchase or manufacturing cost, each of the following metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling;

(ii) charges such as engineering costs, initial costs, and general administrative costs;

(iii) costs of settlements with subcontractors;

(iv) settlement expenses; and

(v) other proper charges.

An allowance for profit (see 8-303) or adjustment for loss (see 8-304(b)) must be made to complete the gross termination claim. All unliquidated advance and progress payments, and all disposal and other credits known when the proposal is submitted, must then be deducted.

(b) *Total Cost Basis.*

(1) When use of the inventory basis is not practicable or will unduly delay settlement, the total cost basis may be used if approved in advance by the TCO. The following are examples of situations where use of the total cost basis may be permitted by the TCO:

(i) if production has not commenced and the accumulated costs represent planning and preproduction or "get ready" expenses;

(ii) if the contractor's accounting system will not readily lend itself to the establishment of unit costs for work in process and finished products;

(iii) if the contract does not specify unit prices; or

(iv) if the termination is complete and involves a letter contract.

(2) When the total cost basis is used under a complete termination, all costs incurred under the contract up to the effective date of termination must be itemized and the costs of settlements with subcontractors and applicable settlement expenses must be added. An allowance for profit (see 8-303) or adjustment for loss (see 8-304(c)) must be made. The contract price for all end items which have been or are to be delivered and accepted must be deducted. All unliquidated

advance and progress payments, disposal and other credits known when the proposal is submitted, must also be deducted.

(3) When the total cost basis is used under a partial termination, the settlement proposal must not be submitted until completion of the continued portion of the contract. The settlement proposal must be prepared in accordance with (2) above except that all costs incurred to the date of completion of the continued portion of the contract must be included.

(c) *Other Basis.* Termination claims may not be submitted on any basis other than (a) or (b) above without the prior approval of the Chief of the Purchasing or Contract Administration Office.

8-308 Limitation on Settlements. The total amount payable to the contractor on account of a settlement, whether through negotiation or by determination, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract.

8-309 Equitable Adjustment in Unit Prices Under Fixed-Price Contracts in Cases of Partial Termination.

(a) A claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion thereof, asserted by the contractor in accordance with the provisions of the Termination clause pertaining to a partial termination, shall be forwarded to the PCO, except when the contractor is notified that negotiation authority has been delegated to the TCO pursuant to this Regulation. The claim shall be submitted on DD Form 633, Contract Pricing Proposal.

(b) When the PCO retains responsibility for negotiating an equitable adjustment of the price of the continued portion of the contract and execution of a supplemental agreement, he shall assure himself on the basis of evidence he deems proper (including coordination with the TCO), that no portion of any increase in price has been included in any termination settlement previously made or currently in process.

(c) The TCO responsible for the termination settlement shall assure himself, on the basis of evidence he deems proper (including coordination with the purchasing office), that no portion of the costs included in the equitable adjustment for the continued portion of the contract are included in the termination settlement.

Part 3—Insurance—General

10-300 Scope of Part. This Part sets forth the general principles and policy applicable to insurance under contracts of the Department for supplies or services.

10-301 Definitions. As used in this Section X the following terms shall have the meanings set forth below:

10-301.1 *Insurance* means the protection against the risk of financial loss by the purchase of coverage from sources independent of and external to the contractor's business or by a program of self-insurance.

10-301.2 *Purchased insurance* means insurance purchased from insurers independent of and external to the contractor.

10-301.3 *Self-insurance* means the assumption or retention of the risk of loss, whether voluntarily or involuntarily, by the contractor. Self-insurance includes the deductible portion of purchased insurance. Insurance provided by captive insurers; i.e., insurers owned by or under the control of the contractor, is self-insurance except that if the captive insurer sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive forces, then the insurance will be considered purchased insurance. This definition applies only to contracts subject to the provisions of Cost Accounting Standard (CAS) 416 or to contracts not subject to the provisions of CAS 416 when the contractor elects to establish a program of self-insurance (see 15-205.16(a)). Self-insurance is not recognized on contracts not subject to the provisions of CAS 416 unless the contractor makes such an election.

10-302 General. Contractors shall be required to carry insurance when:

(a) Insurance, either by purchase or self-coverage, is required for the various perils to which a contractor, subject to CAS 416 (see 15-205.16(a)) is exposed, and except to the extent (i) the Government pursuant to law, agrees in a contract provision to indemnify the contractor under specified circumstances and (ii) a contractor is relieved of liability for loss or damage to Government property pursuant to a contract provision. However, the right to disapprove any insurance coverage is reserved should such insurance not be in the best interest of the Government. Additionally, approval of any contractor insurance program under this Section does not constitute a determination as to the allowability of the program's cost (see 15-205.16).

(b) Contractors, whether or not their contracts are subject to CAS 416, are required by law as well as this Regulation to provide insurance for certain types of perils such as workmen's compensation. Coverage is also mandatory when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government. The minimum amounts of coverage required by this Regulation may be reduced when a contract is to be performed outside the United States, its possessions, and Puerto Rico. When more than one Department is involved, the Department responsible for review and approval of a contractor's insurance program shall coordinate with other interested Departments prior to taking action on significant insurance matters.

10-303 Self-Insurance.

(a) Self-insurance programs must be submitted to the administrative contracting officer for approval when it is anticipated that 50 percent or more of the self-insurance costs to be incurred at a segment will be allocable to negotiated Government contracts and the self-insurance costs at the segment for the contractor's fiscal year are expected to be $200,000 or more. The submission shall be by segment or segments of the contractor's business to which the program applies and shall include, at a minimum, the following data:

(i) description of self-insurance program including any Board of Director resolution authorizing and adopting coverages as to types of risks included and limits, with safety, loss control and legal service responsibilities clearly assigned;

(ii) if available, the Corporate Insurance Manual and organizational chart detailing insurance fiscal responsibilities;

(iii) terms regarding coverage of insurance for any Government property;

(iv) latest financial statements;

(v) any self-insurance feasibility studies and insurance market surveys reporting comparative alternatives;

(vi) loss history, premiums history and industry ratios;

(vii) formula for establishing reserves including variations on a percentage basis between losses paid and losses reserved;

(viii) claims administration policy, practices and procedures;

(ix) how the projected average loss will be calculated;

(x) disclosure of all captive insurance company and re-insurance agreements including methods of costing.

Once approved, any major changes to the program must also be submitted for contracting officer approval. The approval of any program may be withdrawn upon a finding by the contracting officer that either (i) the program or any part thereof no longer complies with the requirements of this Section X and 15-205.16 and (ii) conditions or situations in existence at the time of approval which were a part of the basis for original approval of the program have changed to such an extent that a change in the program is determined to be necessary before it can be approved again.

(b) Programs of self-insurance covering any kind of risk may be approved when examinations of such programs indicate that their application is in the best interest of the Government. However, self-insurance for catastrophic type risks will not be recognized. Should performance of Government contracts create the risk of catastrophic losses for the contractor, the Government may, to the extent authorized by law, agree to indemnify the contractor or recognize an appropriate share of premiums for purchased insurance, or both. To qualify for a program of self-insurance, a contractor must demonstrate that he can sustain the potential losses being self-insured. Some of the factors to be considered in this determination are:

(i) soundness of financial condition, including available lines of credit;

(ii) geographic dispersion of assets so that the potential of a single loss depleting all the assets is unlikely;

(iii) history of losses as to the frequency of occurrence and the financial impact of each occurrence;

(iv) type and magnitude of risk being self-insured, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks;

(v) compliance with Federal and state laws and regulations.

(c) A program of self-insurance for workmen's compensation in any jurisdiction where workmen's compensation does not completely cover employers' liability to employees may be approved only if (i) the contractor also maintains an approved program of self-insurance for any employers' liability which is not so covered or (ii) the contractor shows that the combined cost to the Government of self-insurance for workmen's compensation and purchased insurance for employers' liability will not exceed the costs of covering both kinds of risks by commercial insurance.

10-304 Notice of Cancellation or Change. When insurance is required by contract provision or in writing by the contracting officer or other approving authority, the policies evidencing purchase of such insurance shall contain an endorsement to the effect that cancellation or material change in the policies, adversely affecting the interest of the Government in such insurance, shall not be effective unless the written notice as required by the contracting officer or other approving authority is given. When the coverage is provided by self-insurance, prior approval of the administrative contracting officer is required for any change or decrease in coverage (see 10-303(a)).

10-305 Insurance Against Loss of or Damage to Government Property. Generally, a contractor is relieved of liability for loss of or damage to Government property and insurance coverage is not required. This general rule is limited by certain of the contract clauses in Sections VII and XIII. When insurance is required or approved, the insurance policies for purchased coverage or the Statement of Program Coverage (see 10-303(a)(i) for self-insurance) shall disclose the Government's interest in the property.

10-306 Procedures to be Followed in the Event of Loss of or Damage to Government Property. Upon the happening of loss of or damage to any Government property, concerning which the contractor is relieved of responsibility by contract provision, the procedure to be followed shall be as prescribed in subparagraphs (g)(4) of the clause in 7-104.24(c) and (g)(3) of the clauses in 7-203.21, 7-303.7, 7-402.25(a) and 7-901.5.

BONDS, INSURANCE, AND INDEMNIFICATION

Part 4—Insurance Under Fixed-Price Contracts

10–400 Scope of Part. This Part sets forth the policy of the Departments with respect to insurance under fixed-price contracts for supplies or services.

10–401 Policy. Generally the Departments are concerned with the insurance program of a fixed price contractor only when special circumstances exist. Examples are:

(i) the contractor is engaged principally in Government works;
(ii) the contractor has a separate operation engaged principally in Government work;
(iii) Government property of substantial value is involved;
(iv) the work is performed within a Government installation;
(v) the Government desires to assume risks for which the contractor ordinarily obtains commercial insurance;
(vi) a substantial amount of work is being performed under a fixed-price incentive contract; and
(vii) adequate coverage is not available in the commercial market at a reasonable cost.

10–402 Government Property. The contractors' responsibilities for loss of or damage to Government property under fixed price contracts are set forth in the clauses in 7–104.24.

10–403 Workmen's Compensation and War Hazard Insurance Overseas.

(a) The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees engaged in work outside the United States, including any employee engaged (i) in the performance of a public work contract or (ii) in the performance of any contract approved or financed pursuant to the Foreign Assistance Act of 1961 other than (A) contracts approved or financed by the Development Loan Fund, or (B) contracts exclusively for the furnishing of materials or supplies. As used in this paragraph, a "*public work*" contract includes any contract for a fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project. When the Defense Base Act applies, the benefits of the Longshoremen's and Harbor Workers' Compensation Act are extended through operation of the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq.), to afford protection to employees against the hazards of war risks (injury, death, capture, or detention). Under this plan, once a contract employer has provided the Workmen's Compensation coverage required by the Defense Base Act (by insurance policy or self-insurance program), his employees automatically receive War Hazard Risk protection. An employer need not insure against War Hazard Risk, however, since such war risk benefits are provided at no cost to the employer by the Bureau of Employee's Compensation, Department of Labor. The clause in 7–104.2(a) shall be included in all public work contracts to be performed outside the United States.

BONDS, INSURANCE, AND INDEMNIFICATION

(b) Upon the recommendation of the Secretary concerned, the Secretary of Labor may waive the applicability of the Defense Base Act with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees.

(c) Requests for waivers shall be submitted through channels (i) for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (I&L); (ii) for the Navy, to the Chief of Naval Material; (iii) for the Air Force, to the Directorate of Procurement Policy, Headquarters USAF; (iv) for the Defense Supply Agency, to the Deputy Director, Contract Administration Services, Attn: DCAS-AF; (v) for the Defense Communications Agency, to the Chief, Contract Management Division; (vi) for the Defense Nuclear Agency, to the Chief, Office of Procurement; and (vii) for the Defense Mapping Agency, to the Staff Director of Logistics. The request for waiver shall include the following:

(i) name of contractor;
(ii) business mailing address of contractor;
(iii) contract number;
(iv) date of award;
(v) geographic location where contract will be performed;
(vi) name of insurance company providing the Defense Base Act coverage;
(vii) nationality of employees to whom waiver is to apply; and
(viii) reason for waiver.

(d) (1) If the Defense Base Act has been waived with respect to some or all of the contractor's employees in accordance with procedures set forth in (b) and (c) above, the benefits of the War Hazards Compensation Act will also have been waived as to such employees. In case of such waivers, the contractor shall provide protection against the risk of work injury or death (workmen's compensation type coverage) for the benefit of such waived employees. Insurance for this purpose as in any other case should be obtained at competitive rates in line with the policies of Section XV, particularly if there has been a waiver and the insurance has been or is to be obtained to comply with workmen's compensation or equivalent statutes of a foreign country.

(2) The contractor shall also assume liability to such waived employees and their beneficiaries for war hazard injury, death, capture or detention. At the option of the Chief of the Contracting Office, either the costs of this liability or the reasonable cost of insurance against this liability shall be allowed as a cost under the contract. If it is decided that the contractor shall not purchase insurance against this liability, the clause in 7–104.2(c) shall be included in the contract.

(e) If a contract would otherwise be subject to (a) above, but (d) applies to some or all of the contractor's employees by reason of waiver by the Secretary of Labor, the provisions of 10–501.1 (b) and (c) apply, and the clause in 7–104.2(b) shall be included in the contract.

10–404 Aircraft – Ground and Flight Risk.

(a) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in (b) below, include the clause in 7–104.10

(b) (1) In paragraph (b) of the clause in 7-104.10, certain of the defined terms may be modified by insertion of appropriate additional definitions in the contract in accordance with the following. The purpose of the clause is to have the Government assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the contract as set forth below.

(i) Since the standard definition of "*aircraft*" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(ii) The definition of "*in the open*" may be modified to include "hush houses," test hangers, and comparable structures, and other designated areas;

(iii) "*Contractor's premises*" shall be expressly defined and shall be limited to those locations where aircraft, as defined in the clause, may be located during and for the performance of the contract. "*Contractor's premises*" may include, but are not limited to, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(2) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause, if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. The Government shall not assume such risks if the aircraft is being acquired in connection with a Foreign Military Sale and the foreign government involved has not agreed to assume such risks. If it is determined not to assume such risks, the clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risks shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the Flight Risks clause in 7-204.21, suitably adapted for use in a fixed-price type contract, shall be used.

(3) Subparagraph (d) (iii) of the clause in 7-104.10 may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

10-405 Work on a Government Installation.

(a) Insert the clause in 7-603.10 in all construction and architect-engineer contracts requiring work on a Government installation, and the clause in

7-104.65 in all other contracts requiring work on a Government installation. Neither clause is required, however, for contracts (i) of $10,000 or less, (ii) when only a small amount of work is required on a Government installation (*e.g.*, a few brief visits per month), and (iii) when all work on a Government installation is to be performed outside the United States, its possessions, and Puerto Rico. The coverage specified in 10-501 is the minimum insurance required and shall be included in the clause in 7-603.10 or in the contract schedule. Additional coverage and higher limits may be required by the contracting officer.

(b) The clause in 7-104.65 or the clause in 7-603.10 may also be included in contracts described in (a) (i), (ii), and (iii) above when the contracting officer considers this to be in the interest of the Government. In such contracts, if appropriate, any of the kinds of insurance listed in 10-501 may be omitted or the limits may be lowered.

10-406 Capture and Detention of Contractor Employees. The clause in 7-104.94 is authorized for use when the employees of a contractor are subject to capture and detention under circumstances which may be outside the scope of the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

Part 5—Insurance Under Cost-Reimbursement Type Contracts

10-500 Scope of Part. This Part sets forth the policy of the Departments with respect to insurance under cost-reimbursement type contracts for supplies or services.

10-501 Policy. The types of insurance listed below, with the minimum amounts of liability indicated, ordinarily shall be required in cost-reimbursement contracts and subcontracts thereunder when the provisions of the prime contract are extended to the subcontract. (Insurance written on a single limit basis must be equal to or greater than the combined required minimums indicated.) An approved program of self-insurance, as provided in 10-303, may be substituted for any of the types of insurance ordinarily required.

10-501.1 *Workmen's Compensation and Employers' Liability Insurance.*

(a) Compliance with applicable workmen's compensation and occupational disease statutes shall be required. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational disease shall be required under the employers' liability section of the insurance policy; however, such additional insurance shall not be required when contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage. Employers' liability coverage in the minimum amount of $100,000 shall be required except in states with exclusive or monopolistic funds which do not permit the writing of workmen's compensation by private insurance carriers (Nevada, North Dakota, Ohio, Washington, West Virginia, and Wyoming). The clause in 7-104.2(a) shall be included in all public work contracts as described therein to be performed outside the United States.

(b) When the clause in 7-104.2(b) is required for contractor programs of self-insurance, and the Chief of the Contracting Office determines that the contractor shall not purchase insurance against the liability described in 10-403(d)(2), the clause in 7-104.2(c) shall be inserted in the contract.

(c) Each contract containing the clause in 7-104.2(c) shall contain:

(i) the estimated cost for war hazard losses;

(ii) the clause at 7-203.4(a) appropriately limited to cover allowable war hazard cost;

(iii) the Examination of Records clause (7-104.15); and

(iv) a provision similar to the following:

> The portion of this contract providing for the Contractor to afford protection to his employees and by subcontractors to their employees against war hazard risks (see the clauses entitled Reimbursement for War Hazard Losses and Workmen's Compensation and War Hazard Insurance Overseas) is on a cost-reimbursement, no-fee basis, notwithstanding the basis of payment for the remainder of the contract.

(d) The estimated cost for war hazard losses will be based upon estimates arrived at in the light of experience, taking into account the number of the contractor's employees subject to protection for war hazard risks, the level of benefits applicable to such employees, location, and nature of the risks to which the contractor's employees are exposed. The amount allotted to the contract will initially be kept small as reasonably feasible. As reports are received indicating the need to increase the allotment to a particular contract, these will be evaluated and the allotment increased as necessary. When negotiating for the inclusion in a contract of provisions applicable to war hazard risks, the contracting officer may include provisions concerning the types of foreign nationals employed by the contractor, the level of benefits applicable to them, and other pertinent provisions relating to the manner in which the program will function to the benefit of all concerned. Advance agreements pursuant to 15-107 may also be advantageous with respect to the levels of proof considered acceptable to justify the contractor commencing payments and being reimbursed therefor prior to the time he is able to work out, in a proper case, lump sum settlement of his obligation.

10-501.2 *General Liability Insurance.* Bodily injury liability insurance, in the minimum limits of $300,000 per occurrence shall be required on the comprehensive form of policy; however, property damage liability insurance ordinarily shall not be required.

10-501.3 *Automobile Liability Insurance.* This insurance shall be required on the comprehensive form of policy and shall provide bodily injury liability and property damage liability covering the operation of all automobiles used in connection with the performance of the contract. At least the minimum limits of $100,000 per person and $300,000 per occurrence for bodily injury and $10,000 per occurrence for property damage shall be required.

10-501.4 *Aircraft Public and Passenger Liability Insurance.* When aircraft are used in connection with the performance of the contract, such insurance ordinarily will be considered required coverage. The minimum limits of $100,000 per person and $300,000 per occurrence for bodily injury, other than passenger liability, and a limit of $100,000 per occurrence for property damage shall be required. Passenger liability bodily injury limits of $100,000 per passenger with an aggregate equal to the total number of seats or number of passengers whichever is greater, shall be required.

10-501.5 *Vessel Collision Liability and Protection and Indemnity Liability Insurance.* Where vessels are used in connection with the performance of the contract, such insurance shall be required whenever deemed necessary by the Department concerned.

10-502 Government Property. The contractor's responsibilities for loss of or damage to Government property under cost-reimbursement-type contracts are set forth in the clause in 7-203.21.

10-503 Aircraft-Flight Risk.

(a) Cost-reimbursement-type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in (b) below, include the clause in 7-204.21.

(b) In the clause, the definition of "*aircraft*" may be appropriately modified if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

10-504 Group Insurance Plans Under Cost-Reimbursement Type Contracts.

(a) Group insurance plans under cost-reimbursement contracts shall be submitted for approval to the Heads of Procuring Activities for the Department of the Army; The Chief of Naval Material for the Department of the navy: Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Director, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency. For the Defense Logistics Agency such plans shall be submitted for approval to the Directors, Directorate of Contract Administration, DCASR New York (DCRN-C), DCASR Chicago (DCRI-C), or DCASR Los Angeles (DCRL-C), as appropriate. Changes in the benefits provided under an approved plan that can reasonably be expected to increase significantly the costs being charged to the Government shall be submitted as provided above for approval. Provision shall also be made for the Government to participate in all premium refunds or credits paid or otherwise allowed to the contractor, as required by 15-201.5. In determining the extent of the Government's participation in such premium refunds or credits, consideration shall be given to any special reserves and other refunds that may subsequently be paid to the contractor.

(b) The Defense Department Group Term Insurance Plan is available for use by cost-reimbursement type contractors. A contractor is eligible only if the number of covered employees is 500 or more, and (i) the contractor is wholly engaged in operations under eligible contracts, or (ii) 90 percent or more of the payroll of contractor's operations to be insured under the Plan arises under eligible contracts. Insurance policies under this plan shall be submitted for approval to the Heads of Procuring Activities, for the Department of the Army; the Chief of Naval Material, for the Department of the Navy; Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA-AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency.

10-505 Capture and Detention of Contractor Employees. See 10-406.

12-805 Contract Clauses and Solicitation Provisions. Clause and solicitation provisions implementing the EEO program are contained at:

(i) 7-103.18(a) - Equal Opportunity clause, used with other than Federally assisted construction;

(ii) 7-103.18(b) - Equal Opportunity (Federally Assisted Construction);

(iii) 7-104.22 - Equal Opportunity Preaward Clearance of Subcontracts;

(iv) 7-603.60 - Affirmative Action Compliance Requirements for Construction;

(v) 7-607.13 - Equal Opportunity clause, used with architect - engineer services;

(vi) 7-2003.14(a) - Preaward On-Site Equal Opportunity Compliance Review;

(vii) 7-2003.14(b)(1)(A) - Certification of Nonsegregated Facilities;

(viii) 7-2003.14(b)(1)(B) - Previous Contracts and Compliance Reports;

(ix) 7-2003.14(b)(2) - Affirmative Action Compliance. used with nonconstruction affirmative action compliance programs;

(x) 7-2003.14(d) - Notice of Requirement for Affirmative Action to Ensure Equal Opportunity; and

(xi) 7-2003.14(c) - Notification of Visa Denial.

12-806 Affirmative Action Compliance Programs (AACPs).

12-806.1 *Nonconstruction.* Except as provided in 12-808, each prime contractor and each subcontractor with 50 or more employees and (i) a contract or subcontract of $50,000 or more, or (ii) Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more is required to develop a written AACP for each of its establishments within 120 days from the commencement of its first such Government contract or subcontract.

12-806.2 *Construction.*

(a) Construction contractors are required to meet (i) the contract provision citing affirmative action requirements covering specified geographical areas or projects and (ii) applicable requirements of 41 CFR Part 60-1.

(b) Departments shall maintain a listing of specific geographical areas that are subject to affirmative action requirements which specify goals for minorities and women in covered construction trades. Information concerning this lising and additions thereto will be provided to the principally affected contracting offices in accordance with departmental procedures. Any contracting office contemplating a construction project in excess of $10,000 within a geographical area not known to be covered by specific affirmative action goals shall request instructions prior to issuance of a solicitation. Such a request shall be forwarded through contracting channels to: Labor Advisor, OASA(RDA), for the Army; the cognizant field office of the Naval Facilities Engineering Command, for the Navy; Director of Contracting and Acquisition Policy, Headquarters USAF, for the Air Force; Executive Director for Procurement, for the Defense Logistics Agency; Director of Procurement,

for the National Security Agency; the Counsel, for the Defense Communications Agency; Director, Acquisition Management, for the Defense Nuclear Agency; Staff Director of Logistics, for the Defense Mapping Agency; and the Assistant Director for Administrative Services, for the Defense Civil Preparedness Agency.

(c) Contracting officers shall give written notice to the appropriate Assistant Regional Administrator, OFCCP, within 10 working days of award of the contract subject to these affirmative action requirements. The notification shall include the name, address and telephone number of the contractor, employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed. When requested by the appropriate compliance office, the contracting office shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities (see 18-704.1(b)(2).

12-807 Contracting Officer Responsibilities.

12-807.1 *Contract Provisions.* In all solicitations and contracts, except those exempted by 12-808(b) - (f), the contracting officer shall include the applicable clause(s) and solicitation provisions referenced in 12-805. (Note: By operation of the Executive Order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Order and this Part to include such a clause whether or not it is physically incorporated in such contracts.)

12-807.2 *Determinations (Excluding Construction).*

(a) *Preaward Clearances for Contracts and Subcontracts of $1 Million or More.* Except as provided in (2)*c.* below, the contracting officer shall request the appropriate OFCCP regional office (see (1)*a.* below) to determine whether a prospective contractor is awardable prior to award of any contract, modification of an existing contract for new effort that would constitute a contract award, issuance of any basic ordering agreement, award of any indefinite delivery contract or letter contract, the estimated amount of which is or is expected to aggregate $1 million or more or to increase the aggregate value of an existing contract to $1 million or more.

(1) *Procedure for Requesting Clearances.*

a. Preaward clearance for each proposed prime contract and for each known proposed first tier subcontract of $1 million or more shall be requested by the contracting officer directly from the OFCCP Regional Office(s), as will be listed from time to time in Defense Acquisition Circulars. Verbal requests shall be confirmed in writing.

rentals, transportation, and gratuities, are unallowable. (But see 15-205.10 and 15-205.43).

15-205.12 *Cost of Idle Facilities and Idle Capacity.* (CWAS)

(a) As used in this paragraph, the words and phrases defined in this subparagraph (a) shall have the meanings set forth below.

(1) *Facilities* means plant or any portion thereof (inclusive of land integral to the operation); equipment individually or collectively; or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

(2) *Idle Facilities* means completely unused facilities that are excess to the contractor's current needs.

(3) *Idle Capacity* means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one shift basis* less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period.

*A multiple shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) *Costs of Idle Facilities or Idle Capacity* are costs such as maintenance, repair, housing, rent, and other related costs, *e.g.*, property taxes, insurance, and depreciation.

(b) The costs of idle facilities are unallowable except to the extent that:

(i) they are necessary to meet fluctuations in workload; or

(ii) although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, contractor efforts to produce more economically, reorganization, termination, or other causes which could not have been reasonably foreseen.

Under the exception stated in (ii) of this subparagraph (b), costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see 15-205.42(b) and (e)).

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable, *provided* the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

(d) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

15-205.13 *Fines and Penalties.* (CWAS-NA) Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the contract, or instructions in writing from the contracting officer.

15-205.14 *Reserved.*

15-205.15 *Fringe Benefits.* See 15-205.6(g).

15-205.16 *Insurance and Indemnification (Purchased Insurance CWAS) (Self-Insurance CWAS-NA)*

(a) Insurance by purchase or by self-insuring includes (i) coverage which the contractor is required to carry, or which is approved, under the terms of the contract, and (ii) any other coverage which the contractor maintains in connection with the general conduct of his business. Any contractor desiring to establish a program of self-insurance applicable to contracts not subject to Cost Accounting Standard (CAS) 416 must comply with the self-insurance provisions of the Standard as well as Section X of this Regulation. Approval of a contractor's insurance program in accordance with Section X does not constitute a determination as to the allowability of the program's cost. The amount of insurance costs which may be allowed is subject to the cost limitations and exclusions set forth in the following subparagraphs.

(1) Costs of insurance required or approved, and maintained, pursuant to the contract, are allowable.

(2) Costs of other insurance maintained by the contractor in connection with the general conduct of his business are allowable subject to the following limitations:

(i) types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(ii) costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(iii) the cost of casualty insurance premiums for insurance coverage in excess of acquisition cost of the insured assets is allowable *provided* the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) costs of insurance for the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives, who have supervision or direction of (A) all or substantially all of the contractor's business, or (B) all or substantially all of the contractor's operations at any one plant or separate location in which the contract is being performed, or (C) a separate and complete industrial operation in connection with the performance of the contract; and

(v) costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation. (See 15-205.6.)

(3) Actual losses are unallowable unless expressly provided for in the contract, except:

(i) minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable; and

(ii) losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practices, are allowable for contracts not subject to CAS 416 when the contractor elected not to establish a self-insurance program. Such contracts are not subject to the self-insurance provisions of CAS 416 (see 10-301.3). Also, for contracts subject to CAS 416, and those made subject to the self-insurance provisions of the Standard as a result of the contractor's having established a self-insurance program (see 15-205.16(a)), actual losses may be used as a basis for charges under a self-insurance program when the actual amount of losses will not differ significantly from the projected average losses for the accounting period (see 4 CFR 416.50(a)(2)(ii)).

(4) Contracts operating under a program of self-insurance must obtain approval of the program when required by 10-303(a).

(b) If purchased insurance is available, the charge for any self-insurance coverage plus insurance administration expenses shall not exceed the cost of comparable purchased insurance plus associated insurance administration expenses.

(c) Insurance provided by captive insurers (insurers owned by or under the control of the contractor) is considered self-insurance and charge therfor must comply with

the self-insurance provisions of CAS 416. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the insurance will be considered purchased insurance.

(d) The allowability of premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor, but who reinsure with a captive insurer of the contractor) shall not exceed the amount (plus reasonable fronting company charges for services rendered) which the contractor would have been allowed had he insured directly with the captive insurer.

(e) Self-insurance charges for risks of catastrophic losses are not allowable (see 10-303(b)).

(f) Late premium payment charges related to employee deferred compensation plan insurance, incurred pursuant to Section 4007 or Section 4023 of the Employee Retirement Income Security Act of 1974, are unallowable.

(g) Indemnification includes securing the contractor against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the contractor only to the extent authorized by law, which authorization is implemented in a provision of the contract, except as provided in subparagraphs (i) and (ii) of (a)(3) above.

15-205.17 *Interest and Other Financial Costs.* (CWAS-NA) Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and costs related thereto, are unallowable except for interest assessed by State or local taxing authorities under the conditions set forth in 15-205.41. (But see 15-205.24.)

15-205.18 *Labor Relations Costs.* (CWAS) Costs incurred in maintaining satisfactory relations between the contractor and his employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

15-205.19 *Losses on Other Contracts.* (CWAS-NA) An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts), whether such other contract is of a supply, research, and development, or other nature, is unallowable.

15-205.20 *Maintenance and Repair Costs.*

(a) (CWAS) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see 15-205.9):

(i) normal maintenance and repair costs are allowable;

(ii) extraordinary maintenance and repair costs are allowable, *provided* such are allocated to the periods to which applicable for purposes of determining contract costs. (But see 15-107.)

(b) (CWAS-NA) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

15-205.21 *Manufacturing and Production Engineering Costs.* (CWAS) Costs of manufacturing and production engineering including engineering activities in connection with the following, are allowable:

(i) current manufacturing processes such as motion and time study, methods analysis, job analysis, and tool design and improvement; and

(ii) current production problems, such as materials analysis for production suitability and component design for purposes of simplifying production.

15-205.22 *Material Costs.* (CWAS)

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased outside or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs consideration will be given to reasonable overruns, spoilage, or defective work (unless otherwise provided in any provision of the contract relating to inspection and correction of defective work). These costs are allowable subject, however, to the provisions of (b) through (e) below.

(b) Costs of material shall be suitably adjusted for applicable portions of income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap and salvage and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material involved or be allocated (as credits) to indirect costs. However, where the contractor can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, *provided* such adjustments relate to the period of performance of the contract.

(d) When the materials are purchased specifically for and identifiable solely with performance under a contract, the actual purchase cost thereof should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of material costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materials, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the contractor under a common control shall be on the basis of cost incurred in accordance with this Part 2, except that when it is the established practice of the transferring organization to price interorganization transfers of materials, supplies and services at other than

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36561

Such costs may include the cost of labor and material, and related overhead attributable to such factors as—

(i) excessive spoilage resulting from inexperienced labor,

(ii) idle time and subnormal production occasioned by testing and changing methods of processing,

(iii) employee training, and

(iv) unfamiliarity or lack of experience with the product, materials, manufacturing processes and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated contract, including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the contractor's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the contract.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately prior to termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one contract shall not be allocated to other contracts

(d) *Loss of useful value of special tooling, special machinery and equipment* is generally allowable, *provided*—

(i) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the contractor;

(ii) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(iii) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, special machinery and equipment was acquired.

(e) *Rental cost under unexpired leases* are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if—

(i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(ii) the contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, *provided*, such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(f) (1) Settlement expenses including the following are generally allowable:

(i) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract, and for the termination and settlement of subcontracts;

(ii) reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract; and

(iii) indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision.

(2) When settlement expenses of a termination are significant, a separate cost account(s) or work order(s) shall be established to accumulate and identify these expenses separately.

(g) Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors, *provided*, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with 15-201.4 and 15-203(c). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

15-205.43 *Trade, Business, Technical and Professional Activity Costs.* (CWAS)

(a) *Memberships.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) *Subscriptions.* This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) *Meetings and Conferences.* This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

15-205.44 *Training and Educational Costs.*

(a) (CWAS) Costs of preparation and maintenance of a program of instruction at non-college level, including but not limited to on-the-job, classroom and apprenticeship training, designed to increase the vocational effectiveness of bona fide employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and

(i) salaries of the director of training and staff when the training program is conducted by the contractor; or

(ii) tuition and fees when the training is in an institution not operated by the contractor;

are allowable.

(b) (CWAS) Costs of part-time education, at an under-graduate or post-graduate college level, including that provided at the contractor's own facilities, are allowable only when the course or degree pursued is relative to the field in which a bona fide employee is now working or may reasonably be expected to work, and are limited to—

(i) training materials;

(ii) textbooks;

(iii) fees charged by the educational institution;

16-806 Royalty Report (Foreign and Domestic) (DD Form 783). DD Form 783 is approved for use by contractors and prospective contractors in making reports of royalty information as required by 9-110. While it is preferred that contractors use DD Form 783 (and contractor reproduction of the form is authorized), the contractor may submit the royalty information in such other form as is considered desirable by the contractor, *provided* such other form contains all of the information required by 9-110.

16-807 Report Documentation Page (DD Form 1473). This form shall be used in connection with scientific and technical reports under research and development contracts pursuant to 4-113.

16-808 Reserved.

16-809 Report of Inventions and Subcontracts (DD Form 882). DD Form 882 is approved for optional use by contractors in reporting information required by paragraph (c) of the Patent Rights clauses set forth in 7-302.23(a) and (b).

16-810 Bidders Mailing List Application (Standard Form 129) and Bidders Mailing List Application Supplement (DD Form 558-1).

16-810.1 *General.* Standard Form 129 shall be used in connection with the establishment and maintenance of bidders lists as prescribed in 2-205 and for research and development in ASPR Supplement No. 4, "Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists." Supplemental Information, where required, may be obtained by using DD Form 558-1 (Bidders Mailing List Application Supplement).

16-810.2 *Conditions for Use.*

(a) The application shall be submitted and signed by the supplier (the manufacturer or regular dealer), as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive Invitations for Bids and Requests for Proposals.

(b) Pending the publication of a new edition of the form, the representation prescribed by 7-2003.74 shall be added as a fourth entry after the entry entitled "*Commerce Business Daily*" on Page 2.

16-810.3 *Item Listings for Information of Bidders.* In order to enable suppliers to indicate readily the items on which they will generally desire to submit bids or proposals, there shall be attached to Standard Form 129 forwarded to suppliers for completion, a list of items, or item groups, or an index to such listing of the items, procured by the purchasing activity maintaining the list, which are considered applicable to the supplier's type of business.

16-811 Contract Security Classification Specification (DD Form 254).

Contracting officers shall inform contractors of the security classifications and requirements assigned to the various documents, materials, tasks, subcon-

tracts, and components of the classified contract by using Contract Security Classification Specification, DD Form 254. Instructions for preparation of this form are contained in Section VII, DoD 5220.22-R. The contracting officer is the approving official for the Contract Security Classification Specification and shall insure that it is distributed in accordance with Section VII, DoD 5220.22-R.

16-812 Release and Assignment Forms.

(a) The forms set forth below are approved for use in complying with the assignment and release provisions of paragraph (f) of the compensation clauses for cost-plus-fixed-fee and cost-plus-incentive-fee contracts set forth in 7-203.4 (a) and (b). Forms differing from the approved forms may be used if the contracting officer determines that such forms meet the applicable requirements of the clause. Checks received by Department contracting officers pursuant to paragraph 2 of the assignments in (d) and (e) below shall be forwarded to the finance officer designated in the contract.

(b) Set forth herein is an approved form for the contractor's release required by paragraph (L) of the clauses in 7-203.4 (a) and (b).

CONTRACTOR'S RELEASE (JUL. 1956)

Contract No. .....

Pursuant to the terms of Contract No..... and in consideration of the sum of..... Dollars ($.....) which has been or is to be paid under the said contract to .....(*Contractor's name and address*).

(hereinafter called the Contractor) or its assignees, if any, the Contractor, upon payment of the said sum by the UNITED STATES OF AMERICA (hereinafter called the Government), does remise, release, and discharge the Government, its officers, agents, and employees, of and from all liabilities, obligations, claims, and demands whatsoever under or arising from the said contract, except:

1. Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor, as follows:

2. Claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of the said contract, which are not known to the Contractor on the date of the execution of this release and of which the Contractor gives notice in writing to the Contracting Officer within the period specified in the said contract.

3. Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of the said contract relating to patents.

The Contractor agrees, in connection with patent matters and with claims which are not released as set forth above, that he will comply with all of the provisions of the said contract, including without limitation those provisions relating to notification to the Contracting Officer and relating to the defense or prosecution of litigation.

IN WITNESS WHEREOF, this release has been executed this ..... day of ..... 19.....

.....(*Contractor*)

WITNESSES .....

BY.....

TITLE.....

NOTE: In the case of a corporation, witnesses are not required, but the certificate below must be completed

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36563

Proposals)" provision in 7-2003.20 shall be included in the solicitation. When a solicitation provides for bids or offers on the basis of f.o.b. origin only, as described in paragraph B of this provision, paragraph C and the last sentence of paragraph E shall be deleted. When a solicitation provides for bids or offers on the basis of f.o.b. destination only, as described in paragraph C of the same provision, the following shall be deleted: paragraph B, the opening phrase in paragraph C(2) "Unless bids . . . (see B above)" and the first and third blocks pertaining to origin at the end of paragraph E.

(e) The award shall specify the United States port(s) of loading which afford the lowest overall cost to the overseas destination.

19-213.2 *Military Standard Transportation Movement Procedures (MILSTAMP) Documentation and Export Releases.* A transportation Control Movement Document (TCMD) must be dispatched to the appropriate air or water clearance authority in accordance with MILSTAMP procedures, for all shipments consigned to either air or water terminal transshipment points. Additionally, an Export Release must be obtained for certain categories of supplies to be transshipped via a water port of loading to overseas destination (see 19-213.1 and 16-823). MILSTAMP procedures are designed to be compatible with Export Release procedures for controlling the movement of cargo via water and air terminals. To assure control of export traffic, the clause in 7-104.74 shall be included in contracts calling for shipments consigned to either air or water terminal transshipment points.

19-214 Place of Delivery for Shipments Originating Outside the United States. It is the policy of the Department of Defense, in furtherance of the Cargo Preference Act (46 U.S.C. 1241), to encourage and foster the American Merchant Marine. When transportation of supplies by ocean vessel will be required (see Section I, Part 14) and in the absence of specific instructions from the requiring activity, the place of delivery for shipments originating outside the United States shall be based on the known availability of United States flag vessels between the points involved.

19-215 Diversions Affecting FOB Destination Transportation Costs. To provide the measure for adjustment of shipping costs if the contracting officer directs a change in the place of delivery on f.o.b. destination contracts, the contract shall include the clause in 7-104.75.

19-216 Scheduling of Deliveries To Permit Consolidation of Shipments. The accumulation of small shipments into carload or truckload lots will result in lower transportation costs. Also, the accumulation of small shipments into less than load shipments may result in lower transportation costs. Upon review of the purchase request and in conjunction with the requiring or requisitioning activity, consideration shall be given to revising delivery schedules to provide for deliveries in larger quantities. When feasible, delivery schedules for supplies to be delivered to multiple destinations should be consolidated and the stopoff (in transit) privilege permitted under carrier's tariffs used for partial unloading at one or more points directly en route between the point of origin and the last destination.

19-217 Special Freight Rates for Transportation of Supplies. Part I of the Interstate Commerce Act makes unlawful all unjust discrimination and also prohibits the direct or indirect charging, demanding or receiving, for any service,

greater or less compensation from any person than any other for a like and contemporaneous service. However, Section 10721 of the Revised Interstate Commerce Act permits common carriers subject to the Act to provide for the carriage, storage, or handling of property free or at reduced rates when the services are provided for the United States, State or municipal Governments, and other specified organizations. Accordingly, Section 10721 allows a surface carrier to offer preferential rates to the United States for the movement of property. These rates are popularly known as Section 10721 rates.

19-217.1 *Applicability of Section 10721 Rates.* Section 10721 rates are not applicable to shipments under a fixed-price f.o.b. destination contract. Such rates are published in Government rate tenders and apply on shipments moving on Government bills of lading or on commercial bills of lading endorsed to show that such bills of lading are to be exchanged for or converted to Government bills of lading at destination after delivery to the consignee; however, for such benefits to accrue to the Government on shipments moving on other commercial bills of lading, it becomes necessary to establish that the Government pays the total transportation charges or directly and completely reimburses the party which initially bears the freight charges.

(a) In fixed-price f.o.b. origin contracts, the Government may occasionally require the contractor to prepay the freight charges to a specific destination. In such cases, the contractor would be reimbursed for the direct and actual transportation cost as a separate item in the invoice (see 19-403.2). To insure that the Government, in this type of arrangement, obtains the benefit of Section 10721 rates, when they exist, the clause in 7-103.25 shall be included in the contract.

(b) The Section 10721 preferential rates are applicable to shipments moving on commercial bills of lading under cost-type contracts, when the transportation costs are direct and allowable costs under the cost principles of Section XV. To insure that the Government receives the benefit of lower Section 10721 rates, when they exist, the clause in 7-203.14 shall be included in cost-type contracts.

(c) Section 10721 rates are not applicable on Foreign Military Sales (FMS) shipments. However, on stock fund items from a manufacturer to a depot, Section 10721 rates do apply, unless it is clear that the quantity in a specific transportation unit will be delivered to an FMS purchaser. When it is known that a portion of the material in a transportation unit will be delivered to an FMS purchaser, that portion will be shipped on a separate bill of lading and Section 10721 rates will not apply.

Part 4—Contract Administration

19-401 Traffic Management for Contract Administration. The transportation office of the contract administration office shall have access to or be furnished a copy of the contract, including modifications thereto. When the transportation data regarding f.o.b. origin contracts are insufficient for Government transportation purposes (see 19-202), the contract administration office shall obtain the data used in the evaluation of the bid or proposal from the purchasing office. This will assure that instructions to contractors result in the most efficient and economical use of carrier services and equipment. Transportation personnel are responsible for:

(i) furnishing timely routings and releases for port shipments;
(ii) monitoring shipments to provide for carload or truckload quantities when practicable;
(iii) controlling and issuing Government bills of lading and determining proper freight classification descriptions;
(iv) reviewing documentation to assure the proper distribution and validation of shipping documents;
(v) advising as to the effect proposed changes will have on transportation costs;
(vi) determining, for the contract requirements, the size and capabilities of carrier's equipment to be ordered, based on the need for special shipping arrangements for oversize and overweight or dangerous supplies;
(vii) developing information and reporting movements that may be the basis for negotiating special rates for volume movements or for rate adjustments (see 19-402);
(viii) exercising control of irregularities in packing, loading, loss and damage causes, sealing of vehicles, and documentation of weights;
(ix) providing information on use of transit arrangements;
(x) recommending prepayment, when appropriate, by contractor for f.o.b. origin shipments or parcel post (see 19-403.2 and 19-403.3);
(xi) diverting, reconsigning, tracing, and expediting shipments;
(xii) functioning to control new shipping situations or meet emergency requirements which arise during contract administration; and
(xiii) considering the capabilities of the contractors for performing the foregoing and utilizing these capabilities when appropriate; and
(xiv) utilizing routings through established consolidation stations when it is in the best interest of the Government.

19-402 Volume Movements Within the Continental United States.

(a) Volume movement means the aggregate of one or more freight shipments to move during the contract period, amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, from one point of origin for delivery to one destination point or area. On FMS shipments, the aggregate will be 200,000 pounds or more.

(b) As soon as production schedules and planned destinations have been established after award, the transportation office serving the purchasing office shall review contracts and report planned volume movement in accordance with

the Military Traffic Management Regulation (AR 55-355, NAVSUP Pub 444, AFM 75-2, MCO 4600.14, DSAR 4500.3). A copy of the volume movement report shall be forwarded to the contract administration office. On FMS shipments, include destination country, foreign freight forwarder and port of embarkation (if known).

(c) The transportation office serving the contract administration office will submit required volume movement reports (see 19-401 (vii)) when:

(i) upon review of contract it is determined that no volume movement report has been submitted by the purchasing office; or
(ii) movement requirements are refined or changed to such a degree that a revised volume movement report should be submitted.

(d) Reporting of volume movements will permit a determination of the reasonableness of applicable current rates, and when appropriate, negotiation of adjusted or modified rates, in accordance with the above regulation.

19-403 Shipping Documents Covering FOB Origin Shipments.

19-403.1 *Government Bills of Lading.* Except as provided in 19-403.2, when a contract provides that supplies be delivered f.o.b. origin, with transportation costs to be paid by the Government, shipments shall be made on Government bills of lading furnished to the contractor by the contract administration office. The contracting officer shall not authorize the contractor to ship on a commercial bill of lading for conversion to a Government bill of lading unless delivery is extremely urgent and Government bills of lading are not readily available (see 16-822 and 16-823).

19-403.2 *Use of Prepaid Commercial Bills of Lading.*

(a) When economical or otherwise justified, the contracting officer or his representative may authorize the contractor to make the following f.o.b. origin freight or express shipments (if they have no security classification) at Government expense on prepaid commercial bills of lading to domestic destinations, including United States military air terminals and water terminals:

(i) shipments not exceeding 150 pounds by any form of commercial air transportation (because of restrictions imposed by air carriers, a package weighing more than 100 pounds or measuring more than 44 x 24 x 30 inches should not be tendered to a commercial air carrier unless it is known that it will be accepted;
(ii) shipments not exceeding 250 pounds by railway express or bus express (because of restrictions imposed by bus express carriers, a package weighing more than 100 pounds or measuring more than 45 x 24 x 24 inches should not be tendered to the bus express carrier unless it is known that it will be accepted;
(iii) shipments not exceeding 1,000 pounds by other common carriers; or
(iv) shipments by common carriers, other than specified in (i) and (ii) above, which can be consolidated with the contractor's own prepaid shipments for delivery to one or more destinations; *provided* that, all appropriate f.o.b. origin shipments, under one or more Government

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36565

SECTION XXI

PROCUREMENT MANAGEMENT REPORTING SYSTEM

21-000 Scope of Section. This Section prescribes uniform reports which are required to be prepared by contracting and contract administration offices in order to meet the requirements of the Federal Procurement Data System and provide management with necessary information to help formulate, change or measure the effectiveness of acquisition policy.

PROCUREMENT MANAGEMENT REPORTING SYSTEM

Part 1—Individual Procurement Action Report (DD Form 350)

21-100 Scope of Part. This Part prescribes the reporting on DD Form 350 (set forth in F-200.350) of individual actions taken in connection with the contracting for supplies and services (including construction).

This reporting requirement has been assigned Report Control Symbol: DD I&L(M) 1014.

21-101 Purpose. DD Form 350 provides essential procurement statistics on a uniform basis for required recurring and special reports to the President, the Congress, the Department of Labor, the Office of Emergency Preparedness, the General Accounting Office, the Small Business Administration, and other Federal agencies. It provides figures for measuring the extent to which goals are achieved in the Department of Defense Socio-Economic Program and Management Improvement Program, and also provides significant data for other acquisition policy and management control purposes.

21-102 Applicability and Coverage.

(a) DD Form 350 shall be prepared (*typewritten*) for each debit or credit contracting action in excess of $10,000 which is executed by a component of the Department of Defense except as indicated in (b) below. At the option of the Headquarters of the Military Departments or Defense Logistics Agency, contracting offices may submit an automated record in lieu of a DD Form 350, *provided* that the contract file reflects such information on a separate worksheet or print-out for each individual contracting action in excess of $10,000. Multiple reports may be required for a single action if:

(i) more than one type of contract is involved (see 21-129);

(ii) both the Foreign Military Sales Program and other programs are involved (see 21-123(g));

(iii) the set-aside portion of a contract is awarded by supplemental agreement to a labor surplus area or small business concern which has obtained the non-set-aside portion (see 21-115(c) and 21-125(a));

(iv) the total quantity of an item is set-aside for small business firms and a portion of the total is further set-aside for small business concerns which are also labor surplus area firms (see 1-706.7); or

(v) a prospective price redetermination contract is awarded on the basis of price competition (see 21-126(c)(5)(iii)).

(b) DD Form 350 shall not be prepared for the following contracting actions in excess of $10,000:

(1) Reserved.

(2) Orders placed against indefinite delivery type contracts entered into by the Defense Fuel Supply Center and the Military Sealift Command. The estimated value of the orders to be placed in each fiscal year against each contract shall be reported on a separate DD Form 350 and in the appropriate fiscal year by the Defense Fuel Supply Center and Military Sealift Command for their respective contracts. If an indefinite delivery type contract is awarded by the above organizations in one fiscal year but is not effective until a subsequent fiscal year, the DD Form 350 shall be submitted on 1 October of the fiscal year in which the contract is effective.

(3) Transactions which cite nonappropriated funds, such as funds belonging to the Army and Air Force Exchange and Motion Picture Services. Funds held in trust accounts for foreign governments shall be treated as appropriated funds.

(4) Transactions for leased communications placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO). These actions are covered by other reporting instructions.

(5) Transactions for purchase of land, or rental or lease of real property.

(6) Awards to GSA stock and through the GSA Consolidated Purchase Program.

(7) Transactions which involve Government bills of lading or transportation requests.

(8) Awards to individuals in support of dependents schools, *e.g.*, principals and teachers. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a single DD Form 350. On this consolidated DD Form 350, enter Code 025039, Dependents School Personnel, in Item 6, and enter the appropriate activity symbol, current fiscal year and five zeros in Item 2A, and enter the number of actions involved in Item 7B. Awards to minority group members shall be consolidated separately and the cumulative dollar amount reported on a separate DD Form 350 with entry of Code A in Item 5A. On each of the consolidated forms, enter the number of awards to women in Item 9C. If none, enter *NONE*.

(9) Orders placed against indefinite delivery-type contracts entered into by the Military Traffic Management Command for stevedoring services. Orders under each such contract shall be consolidated quarterly and the cumulative dollar amount reported on a single DD Form 350.

(10) Military Airlift Command awards for international airlift services. These actions shall be reported at the end of each operating month by the issuance of one master DD Form 350 for each airlift contract. All DD Form 350 items, except Items 1A, 4, 10A, 24, 25, and 26, shall be completed on each master DD Form 350. Each master DD Form 350 shall also include an attachment which lists Items 1A, 4, 10A, 24, 25, and 26, data for individual actions against each contract.

(11) Orders placed by the U.S. Army Troop Support Agency for resale items in excess of $10,000 against Brand Name Contracts entered into by the Defense Logistics Agency and published in Supply Bulletin Series 10-500. These transactions shall be reported on TSA Form 203-R in accordance with instructions on that form. As a minimum, TSA Form 203-R shall provide for reporting

of total actions and dollar amounts monthly, categorized by place of performance, negotiation authority, and large or small business. This provision is applicable to U.S. Army Troop Support Agency activities only.

(12) Vouchers processed by the U.S. Army Procurement Agency, Europe (USAPAE), for the purchase of utilities from municipalities, such as gas, electricity, water, sewage, steam, snow removal, and garbage collection. These transactions shall be consolidated monthly and the cumulative dollar amount reported on a separate DD Form 350 for each of Item 10A Codes S111, S112, S114, S119 and S205. On these consolidated reports enter in Item 2A the activity address number of the reporting office, XX for fiscal year, and five zeros; enter in Item 6 Code 666666, European Utility Companies; and enter in Item 7B the number of actions that were consolidated. This provision is applicable only to activities under the jurisdiction of the U.S. Army Procurement Agency, Europe.

(13) Grants for basic research with educational institutions and other nonprofit organizations. (See 4-108.)

(c) Contracting Action refers to any contractual action to obtain supplies, services, or construction, which obligates or deobligates funds, except as indicated in (2) below.

(1) The term includes preliminary contractual instruments and letter contracts; definitive contracts including notices of award; purchase orders; job orders; task orders; delivery orders; contingency orders; administrative notices; communication service authorizations (CSA's); production lists; priced exhibits; and other orders against existing contracts including debit and credit actions that modify a contract, such as modifications, change orders, supplemental agreements, cancellations, and terminations.

(2) The term does not include contracts which do not obligate funds or do not name a fixed quantity, such as requirements contracts, indefinite quantity contracts, even though these may obligate funds for minimum quantities (orders against such contracts, however, are to be reported as contracting actions), requisitions, and other means of transferring supplies or services within, or between, the Departments or the contracting agencies of the Department of Defense. Indefinite delivery type contracts of the Defense Fuel Supply Center and the Military Sealift Command are an exception to this provision and shall be reported in accordance with (b)(2) above.

(d) The coverage prescribed in (a) above shall include contracting actions against:

(i) appropriated funds;
(ii) contract authorizations;
(iii) stock or other revolving funds which are replenished or reimbursed from appropriated funds;
(iv) appropriated funds transferred to the Department (such as Military Assistance Program funds); and
(v) appropriated funds obligated pursuant to the provisions of Public Law 85-804 (see 21-123).

(e) For contracts placed with the U.S. Small Business Administration pursuant to the Small Business Act - Public Law 85-536 Section 8(a) - enter in Item 6 after "Company Name" the name of the concern which will be performing under the contract and enter "SBA" after "Division Name". The address and company code shall be that of the performing concern. Also enter the PII number

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36567

in Item 2A (*e.g.*, DAAH01-78-F0260). Code A in Item 5A, Code 4 in Item 12, Code 6 in Item 13, Code 5 in Item 15, Code J (or L if place of performance is outside the U.S.) in Item 16, Code 17B in Item 17, Code 7 in Item 18, and enter the appropriate codes for all remaining items.

21-102.1 *Coding Implementation.* The Headquarters of the Military Departments and Defense Logistics Agency may issue implementing instructions pertinent to the coding for data processing of the data elements contained herein.

21-103 Due Date and Distribution.

(a) In addition to instructions given in (b) and (c) below for contracting offices of specified departments and agencies, the following instructions are applicable to all contracting offices.

(1) For the month of September only, prescribed due dates are extended 10 additional calendar days in order to assure complete coverage of all contracting transactions occurring in the fiscal year.

(2) Corrected reports, if required, shall be distributed to all recipients of the original reports. To correct an erroneous report, two DD Forms 350 are required (see 21-109).

(3) DD Forms 350 shall be submitted as unclassified documents. If necessary, the commodity description (Item 11) and System or Equipment Code (Item 10B) may be omitted and the word "classified" inserted in lieu thereof. Similarly, the Estimated Completion Date (Item 25) may be reported as "classified" if this item requires security classification. Should further security classification of items on DD Form 350 be deemed necessary by the reporting office, a communication relating the circumstances justifying such classification shall be submitted to Directorate for Information Operations and Reports, Washington Headquarters Services, Washington, D. C. 20301, through the Departmental or Agency channels prescribed in (b) below. In no case shall the term "classified" be used in lieu of the dollar amount in Item 26.

(b) Except for the Defense Fuel Supply Center, the signed original of each DD Form 350 shall be forwarded within 3 working days after the action shown in Item 24 as shown below. For those Defense Fuel Supply Center major petroleum acquisitions which result in multiple awards, the signed original of the DD Form 350 shall be forwarded within 15 working days. (*Letter of Transmittal is not required.*)

(1) *Army* contracting offices (except for Engineer Civil Functions contracting offices) to HQDA (JDHQ-SV-W-P) Washington, D.C. 20310. Additional copies of each DD Form 350 shall be forwarded to the appropriate Head of the Contracting Activity when directed by Departmental instructions.

(2) *Army Engineer Civil Functions* contracting offices to HQDA (DAEN-PRP) Washington, D.C. 20314. An additional copy shall be sent to this addressee.

(3) *Naval* field purchasing offices to the Head of the Contracting Activity from which purchase authority was received, with the exception of the Navy Aviation Supply Office (ASO) and the Ships Parts Control Center (SPCC); ASO and SPCC to the Naval Supply Systems Command Headquarters. Heads of Contracting Activities shall edit and correct these reports and transmit them together with other DD Form 350 reports prepared by the Contracting Activity to the Headquarters, Naval Material Command, Washington, D. C 20360, Attn:

MAT 08C14. An additional copy of DD Form 350 shall be forwarded to the Headquarters, Naval Material Command, Attn MAT 08C2, when required by

(i) NPD 1-403.61 as the Report After Execution of Contract; and

(ii) NPD 3-306.53(f)(3) as a report of contracting under a Class Determination and Findings.

(4) *Air Force* contracting offices as directed by HQ USAF. All contracting offices except those under AFLC and AFSC shall forward two copies to the appropriate major command headquarters staff contracting office or division. When contract items requiring provisioning actions are involved, a copy of the DD 350 shall be forwarded to the provisioning contracting office.

(5) *Defense Logistics Agency* contracting offices to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Attn: DLA-PA, Alexandria, Va. 22314.

(6) All other contracting offices of the Department of Defense shall forward the signed originals to HQDA (JDHQ-SV-W-P) Washington, D.C. 20310.

(c) Contracting offices shall prepare DD Form 350 for procurement actions in excess of $10,000 which are reportable in accordance with 21-102 and are accomplished by contract administration offices. To facilitate such reporting, the ACO within one working day after the action date shall transmit to the contracting office on whose behalf the action was taken a copy of the contractual instrument clearly annotated in the heading in large block letters as the "DD FORM 350 REPORTING COPY". The purchasing office shall prepare and submit the DD Form 350 within 3 working days after the receipt of the "REPORTING COPY."

21-104 Reserved.

21-105 Item 1A, Report Number (Current).

(a) *All Components.* Each contracting office which is identified by a separate number in the Item 5 code block shall enter a four-digit alpha-numerical number assigned consecutively starting with 0001 at the beginning of each fiscal year. This number shall be followed by a dash and the last two digits of the fiscal year. The date of the action entered in Item 24 must reflect a date within the same fiscal year as that assigned to the report number. Numbers with less than four significant digits shall be preceded by zeros; *e.g.*, the fourth report in fiscal year 1980 would be numbered 0004-80. If more than one activity within a contracting office utilizes the same reporting office code, the contracting office shall assign separate blocks of numbers to each such activity in order to prevent duplication of report numbers.

(b) *Navy.* When DD Form 350 is submitted as a Report After Execution of Contract, enter the RAE number required by NPD 1-403.53(a)(5) immediately following the report serial number.

(c) *Defense Logistics Agency.* Subsistence contracting offices of the Defense Personnel Support Center shall use two blocks of numbers.

(i) perishable subsistence actions shall begin with 0001, and

(ii) nonperishable subsistence with 5000.

21-106 Item 1B, (No title). This item is for optional use by DoD components

21-107 Item 1C, Report Number (Previous). Enter the report number of the last previous DD Form 350 relating to the same contract.

21-108 Item 2, Contract Number. Enter only Department of Defense contract numbers in Subitem A; contract numbers for all other Federal agencies shall be entered in Subitem B. For orders under contracts awarded by other Federal Agencies (*i.e.*, GSA Federal Supply Schedule, Government Printing Office, and Veterans Administration contracts), enter the Federal Agencies' contract number in Subitem B. For orders covering direct purchases from other Federal agencies, such as Federal Prison Industries, Tennessee Valley Authority, Veterans Administration, Treasury, etc., enter the Defense delivery order number in Subitem A, *e.g.*, DAAH01-78-F0260. If entry is in Subitem A, then Subitem B must be blank, and vice versa.

(a) Subitem A(1). Activity - Enter the first six characters of the contract number which identify the activity listed in Appendix N. Activity symbols assigned prior to the initiation of Section XX, Part 2, shall be expressed as a six character symbol. For Army, the five digit fiscal station code shall be prefixed by the letter A, thus 01-002 for Anniston Army Depot shall be reported as A01002. Navy symbols of less than five digits shall be prefixed by zeros, *e.g.*, 383 for ASO shall be reported as N00383.

(b) Subitem A(2). FY - Enter the last two digits of the fiscal year in which the basic contract number was initially assigned (not the fiscal year of the immediate action); *e.g.*, 78 for fiscal year 1978. If the fiscal year is not known for contract numbers assigned prior to the initiation of Section XX, Part 2, or cannot be ascertained after a reasonable search, enter "XX".

(c) Subitem A(3). Serial No. - Enter as a five-position entry, the serial number assigned to the contract. For serial numbers assigned in accordance with Section XX, Part 2, the first character shall be type of instrument as described in 20-203.1(iii). The remaining four characters shall be the serial number assigned in accordance with 20-203.1(iv). For other contract numbers, *i.e.*, those numbered under exceptions permitted by 20-201, the serial number also shall consist of five characters, *e.g.*, 00001, 00124, 01356, 71284, etc. If a serial number has not been assigned, enter five zeros. Do not enter other supplementary procurement instrument identification numbers in Subitem A(3); such numbers shall be entered in Item 4.

(d) Subitem B. Other - For orders under contracts awarded by other Federal agencies, enter the contract number of the Federal Agency as it appears in the contractual instrument; *e.g.*, GS-00S-27773, GP-16251A, V979P-2048A, etc.

21-109 Item 3, Correction of Previously Reported DD Form 350.

(a) If it is necessary to correct an error on a previously reported DD Form 350, two DD Forms 350 are required.

(1) *Code 1 Corrected Entry.* Enter the correct data in all items. Entries in Item 1A and Item 23 shall be the same as those reported on the report being corrected, except when such items are the subject of the corrections being made.

(2) *Code 2 Reversing Entry.* Enter data in all items exactly as in the incorrect report except that the dollar amount shown in item 25 shall be the reverse of the amount originally reported; that is, if the amount of the incorrect report was a debit, the amount of the reversing entry shall be a credit and vice versa. Entries in Item 1A and Item 23 shall always be the same as those reported on the report being corrected.

(b) The item numbers being corrected will be noted on both the reversing and correcting reports in the spaces provided.

21-110 Item 4, Modification Number and Other Identification. Enter the supplementary procurement instrument identification numbers assigned in accordance with 20-204 for letter contract modifications, orders against indefinite delivery type contracts and basic ordering agreements, contract change notifications, change orders, supplemental agreements, and other modifying actions. For those numbered under exceptions permitted by 20-201, enter the identification and number such as Mod. 35; C.O. No. 2; *etc.*

21-111 Item 5, Purchasing Office. Enter sufficient detail to establish the identity of the purchasing office submitting the report. Enter in the Item 5 code space, the number or symbol assigned to the purchasing office in accordance with DoD Procurement Coding Manual, Volume III.

21-111.1 *Item 5A. Small Disadvantaged Business Concern* (see 1-701.2).

(a) Enter Code A if the award was made to a small disadvantaged business concern in accordance with the representation required in 1-707.3(f).

NOTE: If Code A is entered, the contractor designated in Item 6 must be small business.

(b) Enter one of Codes B through F for all other awards.

(i) Enter Code B if there is no known small disadvantaged source. Also enter Code B for orders under contracts awarded by other Federal Agencies for which data are not readily available.

(ii) Enter Code C if there was a known small disadvantaged business concern but it was not solicited for a bid or proposal.

(iii) Enter Code D if a small disadvantaged business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover total requirements but received award for that portion bid on.

(iv) Enter Code E if a small disadvantaged business concern was solicited but was not awarded the contract for reasons other than those coded B, C, D, or E.

(v) Enter Code F if a small disadvantaged business concern was solicited, but was not awarded the contract for reasons other than those coded B, C, D, or E.

21-112 Item 6, Contractor Identification. Enter the complete name and office address (street, city, and state) of the concern or division of the concern involved. If the contractor is a division, enter first the name of the parent company, and then the name of the division, followed by the address of the division. For example:

Company Name:	XYZ Company
Division Name (if any):	Flight Propulsion Division
Number and Street	1 Smith Road
City and State:	Jonesville, Ohio
	Zip Code

Enter in the Item 6 code space, the first six digits of the contractor code as shown in the Department of Defense Procurement Coding Manual, Volume II. If the contractor is not listed in the Manual, no code entry shall be made by the purchasing office. For contracts placed with the Canadian Commercial Corporation, enter "Canadian Commercial Corporation" after "Company Name" and enter the name of the concern performing under the contract after "Division Name". The address shall be that of the performing concern. The company code shall be that of the Canadian Commercial Corporation. For contracts placed with the U.S. Small Business Administration under the Small Business Act, see 21-102(e).

21-112.1 *Item 6A, DUNS CONTRACTOR ESTABLISHMENT NUMBER.* Enter the nine-position number assigned by Dun and Bradstreet, Inc., that identifies the contractor establishment receiving the award as shown in Item 6. This DUNS Contractor Establishment Number should be for the division or plant identified. For contracts placed with the Canadian Commercial Corporation, enter "20-889-1788" in Item 6A code. The DUNS Contractor Establishment Number is available from one of the following sources:

(a) The offeror's response to the solicitation;

(b) If not provided with the offer, the successful offeror shall be contacted and requested to supply his applicable nine-digit number;

(c) If not provided by the successful offeror, the Federal Procurement Data Center (FPDC) DUNS Contractor Identification File, Alphabetical Listing shall be consulted. (This listing should contain all successful offerors receiving Federal prime contract awards over $10,000 since October 1, 1978); or

(d) If this listing has no entry for the establishment, the applicable nine-digit number shall be obtained by contacting a Dun and Bradstreet, Inc., representative at the FPDC via automatically answered telecopier (facsimile) (703) 235-9710, or commercial telephone (703) 235-9603. All requests/requestors should provide the following information:

(i) Name of requesting contract office;
(ii) Contracting office location (city/town; state/country) and commercial telephone number (including area code);
(iii) Name of individual making the request;
(iv) The total number of requests, if more than one; and
(v) Contractor establishment name, street address (and/or P.O. Box), city/town, and state/country as displayed in Item 6.

Telecopier requests must provide space on the request for entering the DUNS numbers. Sender must initiate automatic 24-hour telecopies (set for 4 minutes) immediately upon hearing the tone.

(e) For foreign contractors other than the Canadian Commercial Corporation, the procedures in (c) and (d) above apply.

(f) If a DUNS number is still not available after all of the above methods are used, the report shall be submitted within the time limits required by 21-103(b) with Item 6A left blank.

21-113 Item 7, Principal Place of Performance.

(a) Enter the actual location (military installation; *e.g.*, Fort Knox, Kentucky, or the city and state, or foreign country) of the plant or place of business where the items will be produced or supplied or where the service will be performed. Principal place of performance, in general, refers to the prime contractor's final assembly point of a manufactured article, construction site, or place where a service is performed for the Government. If the location is the same as for Item 6, enter in the word "Same". Do not leave Item 7 blank. Also enter in the coding blocks, the military installation or city and state or foreign country codes shown for the contractor in the Department of Defense Procurement Coding Manual, Volume II. If the contractor's name is listed in the Manual, but for a different location than the one in Item 7, no entry shall be made in the code blocks.

(b) Regular dealers ship from stock, in which case the place of performance is the regular dealer's location. Regular dealers also ship from subcontractors who produce the items, in which case the place of performance is the subcontractor's location.

(c) If more than one location is involved, show the location involving the largest dollar amount of procurement. Do not show more than one location in Item 7. Report other locations on the reverse side or on an attached sheet.

(d) For construction contracts, report the actual site of construction.

(e) For architect/engineering contracts, report the planned site of the construction.

(f) In cases where the places of performance will be varied or unknown, enter the home office location of the contractor.

(g) Where labor surplus area set-aside preference is given, the principal place of performance shall be the city and state of the area which determined the preference.

21-113.1 *Item 7A, Reserved.*

21-113.2 *Item 7B, Reserved.*

21-113.3 *Item 7C, Multiyear Contracting.* Enter Code A if the action is a multiyear contract as defined in 1-322.1(a). Enter Code C if the action is not a multiyear contract.

21-114 Item 8, Subject to Statutory Reqirements.

Code in accordance with the provisions of the contract as follows:

Code A—Subject to Walsh-Healey Act, Manufacturer: Section XII—Part 6.

Code B—Subject to Walsh-Healey Act, Regular Dealer: Section XII—Part 6.

Code C—Subject to Service Contract Act: Section XII—Part 10.

Code E—Subject to Davis-Bacon Act: 18-702.1(a).

Code Z—Not subject to above statutory requirements. Also enter Code Z for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115 Item 9, Labor Surplus Area Preference.

(a) *Labor Surplus Area.* See 1-801.2 for definition. The Department of Labor publication "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy No. 4B and Executive Orders 10582 and 12073" defines all areas classified as labor surplus areas. If Code 2, 3, 6, 7, or 8 is entered, the entry in Item 7 must be a city which on the date of the action is located within a labor surplus area (see 21-113(g)).

(b) *Code 1.* Reserved.

(c) *Code 2.* Partial Labor Surplus Area Set-Aside Preference. (See 1-804.) Enter this code if the action was awarded to a concern in a labor surplus area, wherein preference was given under partial labor surplus set-aside procedures, except if set-aside preference resulted from a combined Small Business/Partial Labor Surplus Set-Aside as set forth in subparagraph (g) below. If Code 2 is entered, Code 1A must be entered in Item 17.

(d) *Code 3.* Labor Surplus Area - Tie Bid Preference. Enter this code if the action was awarded to a concern in a labor surplus area and tie bid preference was given.

(e) *Code 4.* Reserved.

(f) *Code 5.* Not a Labor Surplus Area Preference Award. Enter this code if the action did not involve labor surplus area preference considerations as defined for Codes 2, 3, 6, 7, or 8. Also enter this code if a Labor Surplus Area Set-Aside results in an award under Group 7 to a Small Business concern which is not located in a labor surplus area (see 1-804.2).

(g) *Code 6.* Combined Small Business/Partial Labor Surplus Area Set-Aside (see 1-706.7). Enter this code when reporting the successful labor surplus portion of a combined set-aside. (See 21-102(a)(iv)). If Code 6 is entered, Code 1B or 17A must be entered in Item 17.

(h) *Code 7.* Total Labor Surplus/Small Business Set-Aside Preference. Enter this code when reporting an award that is totally set-aside for labor surplus areas in combination solely with small business firms in such areas, in accordance with Priority 1 in Section 502(e) of Public Law 95-89. These actions are currently applicable to current awards obligating FY 77 and prior year procurement and research and development funds, and all Military Construction Appropriation funds. If Code 7 is entered, Code 1B or 17A must be entered in Item 17.

(i) *Code 8.* Total Labor Surplus Area Set-Aside Preference. Enter this code when reporting an award that is totally set-aside for labor surplus areas, but with no further preference as to whether it is to be awarded to large or small business firms, in accordance with Priority 4, in Section 502(e) of Public Law 95-89. These actions are currently applicable to current awards obligating FY 77 and prior-year contracting and research and development funds, and all Military Construction Appropriation funds. If Code 8 is used, Code 1A must be entered in Item 17.

(j) *Modifications.* If the action is a modification, the codes will be determined on the basis of the area classification at the time of such modifying action. If a supplemental agreement is used to award the partial labor surplus set-aside portion of a contract to a concern in a labor surplus area which has obtained the non-set-aside portion, separate DD Forms 350 shall be used to report the set-aside and non-set-aside portions (see 1-804.2(d)(2)).

21-115.1 *Item 9A. Affirmative Action Plan.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor certified that an affirmative action plan has been developed and is on file. Where certification is exempted (see 12-806), enter Code "3". Also enter Code "3" for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115.2 *Item 9B. Previously Held Contracts.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor certified that there have been previous contracts subject to the written affirmative action program requirements of the rules and regulations of the Secretary of Labor. Enter Code 3 where certification is exempt or for orders under contracts awarded by other Federal Agencies for which data are not readily available.

21-115.3 *Item 9C. Woman Owned Business.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the contractor is a woman owned business or entity. Enter Code 3 if the contractor does not complete this certification (see 7-2003.80) or if the award is an order under contract awarded by another Federal Agency for which data are not readily available.

21-115.4 *Item 9D. Consultant Services.* Enter appropriate Code "1" for *Yes*, "2" for *No*, to indicate whether the award is for consulting type services.

21-116 Item 10A, FSC or Service Code. Enter a Federal Supply Classification, a Research, Development, Test or Evaluation (RDTE) Code, or a Service Code in accordance with Volume I of the Department of Defense Procurement Coding Manual (Section I). Each DD Form 350 must contain a four-digit entry for this item. If more than one classification is applicable to the procurement action, enter the one accounting for the largest dollar volume of procurement.

(a) *Research, Development, Test, and Evaluation.* RDTE is defined in 4-101. Each DD Form 350 action for RDTE shall be assigned a code beginning with the letter "A," in accordance with Section I, Part A of the coding manual, including in general:

(i) all contracts negotiated under the authority of 10 U.S.C. 2304(a)(11), Experimental, Development, or Research Work.

(ii) most but not all, contracts negotiated under 10 U.S.C. 2304(a)(5), Services of Educational Institutions,

(iii) all contracts funded by Research, Development, Test and Evaluation appropriations; and

(iv) all contracts where the purpose is for research and development even though not authorized under 10 U.S.C. 2304 (a) (5) or (11), or funded by RDT & E appropriations

However, do not assign RDTE codes for the procurement (including rental or lease) of equipment or housekeeping supplies/services separately purchased in support of RDTE work. This exception refers to the purchase of equipment upon which RDTE work will be performed, test equipment, office equipment, structural steel plates, etc.; or services such as construction, maintenance of facilities or equipment, utilities, rental of ADP equipment, guard services, etc. Generally procurement of services or supplies that are incidental to the fulfillment of RDTE work, *but does not require contractor RDTE performance*, shall be coded in accordance with Parts B and C, Section I of the coding manual, even though such purchases are in support of RDTE work and RDTE funds are cited. In no case shall RDTE codes be assigned for orders under GSA Federal Supply Schedule contracts. The purchase request, as prepared by the research and development technical sections, will provide the necessary information to enable personnel preparing the DD Form 350 to properly identify the RDTE code

(b) *Services*. All services, except RDTE actions, shall be coded in accordance with Part B, Section I of the coding manual. Each category is assigned a series of four-digit codes for specific types of services and construction.

(c) *Supply*. Procurement of supply items shall be assigned a Federal Supply Classification (all numeric) code from Part C, Section I of Volume I of the Department of Defense Procurement Coding Manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2-1, H2-2, and H2-3 also may be used as a reference in identifying the correct four-digit code.

21-117 Item 10B, System or Equipment Code.

(a) Enter the code for weapons system or equipment in accordance with Volume I of the Department of Defense Procurement Coding Manual (Section II). If a weapons system or equipment code is not applicable, enter three zeros, *i.e.*, 000

(b) Codes in Section II are not applicable to construction, subsistence, clothing/textiles, or petroleum, and generally have been assigned to all production end items whose annual programmed procurement is $2,000,000 or more. Accordingly, if a code cannot be found for a DD Form 350 action of $2,000,000 or more, which is for an end item or a component identifiable to an end item, a specific request for a code together with the applicable DD Form 350 should be addressed to the appropriate organization specified in 21-103(b). Submission of the DD Form 350 will not be delayed pending resolution of the inquiry. This reporting requirement is not applicable to the Defense Logistics Agency.

21-118 Item 10C, DD Claimant Program Number. Enter the appropriate DDCP number that identifies the commodity described in Item 11. Claimant Program Numbers are defined in Volume I of the Department of Defense Procurement Coding Manual (Section III). If the description in Item 11 is for research and development, the objective of the research and development shall control the DDCP number to be entered; *e.g.*, if the objective of the research and development is a guided missile, enter Code A-2. If the description in Item 11 is for research that cannot be identified with a particular claimant program, enter Code S-1. Contracts for ship repair, IRAN and modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible. Equipment rental (including rental of electrical accounting machines or electronic data processing equipment) and utility services shall be coded S-1. If a particular claimant program cannot be identified, enter Code S-1 for services and C9E for supplies or equipment

21-119 Item 11, Description of Commodity or Service.

(a) Enter brief description of commodity or service. Specify end use of item and model numbers where possible, *e.g.*, M-16 Rifle; B-52 Aircraft; A-4E Aircraft, Radio Set AN/FRT-51. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Typhon, Jupiter, etc., or an identifying program number, *e.g.*, WS-107A, can be used without classifying the report.

(b) When an increase or decrease in funds is the result of price redetermination, change in fixed-fee, contract termination, engineering change, overrun, accelerated amortization, or continuation of research and development, specify the equipment or service acquired under the basic contract, such as "Price Redeter-

mination for M-60 tanks," "Termination of Contract for J-57 Engines," "Engineering Changes on Submarine SS(N)585," "Accelerated Amortization on Contract for B-4 Maintenance Platform."

21-120 Item 12, Coordinated Procurement. Enter one of Codes 1 through 8 for each contracting action.

(a) *Code 1. Procurement Agreements*—Enter this code for contracts made under agreements among the departments or other agencies for procurement of commodities or services not assigned in accordance with Section V, Part 12. (See Section V, Part 11.)

(b) *Code 2. Other Federal Agencies.* Enter this code for all procurements from or through other Federal Agencies (except General Services Administration and Small Business Administration), such as, Government Printing Office, Federal Prison Industries, National Industries for the Blind, Veterans Administration, Tennessee Valley Authority, Treasury, Agriculture, Commerce, Justice, etc. When Code 2 is entered, Code 6 shall be entered in Item 13, Code 4 in Item 14, and Code 1 or J, as appropriate, shall be entered in Item 15. Code 2 is not applicable to Defense Logistics Agency contracting offices.

(c) *Code 3. GSA Supply Schedules.* Enter this code for all procurements under GSA Federal Supply Schedule contracts (see Section V, Part 1). Also enter this code for all contracting under GSA ADP schedule contracts. For orders under Veterans Administration contracts published in GSA Federal Supply Schedules, enter Code 2. When Code 3 is entered, Item 15 shall be coded *I* or *J*, as appropriate.

(d) *Code 4. Small Business Administration.* Enter this code if the award is to the Small Business Administration pursuant to the Small Business Act - Public Law 85-536 Section 8(a) (see 21-102(e)).

(e) *Code 5. Single Department Procurement*—Enter this code only if the reporting office has a current commodity assignment to purchase a commodity listed in 5-1201.

(f) *Code 6. Defense Logistics Agency*—Enter this code for all contracts by Defense Logistics Agency centers except contracts from or through the General Services Administration and the Small Business Administration. Military Departments also shall enter this code for orders placed against indefinite delivery-type contracts awarded by Defense Logistics Agency centers except those awarded by the Defense Fuel Supply Center.

(g) *Code 7. Outside U.S.*—Enter this code for all contracts other than those classifiable as Codes 1 through 6 above made by contracting offices located outside the United States, its possessions, and Puerto Rico.

(h) *Code 8. All Other*—Enter this code for all contracts not classifiable in codes 1 through 7 above

21-121 Item 13, Synopsis of Proposed Procurement. Enter one of the codes described below. The term "Not Applicable" shall not be used. Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multi-year contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply

(a) *Code A. Was Synopsized*—Enter this code if a synopsis of the proposed contract was prepared and transmitted in accordance with 1-1003.9

(b) *Code E. Was Not Synopsized: Original Estimate Under $10,000*—Enter this code if the proposed contract was not synopsized because it was originally estimated to be less than $10,000.

(c) *Codes 1 Through 9. Was Not Synopsized*—Enter one of these codes to identify the permissive authority of 1-1003.1(c)(i) through (ix), which correspond with Codes 1 through 9, respectively, for not synopsizing a proposed procurement. However, Code 5 shall not be used since orders under existing contracts are to be coded the same as the basic contract. Code 6 shall be used for all contracts from or through another Government department or agency, including contracting under GSA Federal Supply Schedules. Code 6 also shall be used for orders placed against DLA schedules for proprietary (brand name) items. Code 9 shall be used for contracts in which only foreign sources were solicited.

21-122 Item 14, Kind of Procurement Action. Enter one of Codes 1 through 9 for each procurement action. With respect to modifications of existing contracts, including letter contracts designated as modifications, enter one of Codes 6 through 9, as appropriate (except see (c) below).

(a) *Code 1. Initial Letter Contract*—Enter this code when a new letter contract is executed. (For a letter contract which is designated as a modification of an existing contract, see Code 6.)

(b) *Code 2. Definitive Contract Superseding Letter Contract* — Enter this code when applicable. (For a definitive modification which supersedes a letter contract designated as a modification of an existing contract, see Code 6.)

(c) *Code 3. Definitive Contract (Including Notice of Award)* — Enter this code when the first binding document is the instrument containing all the terms and conditions of the agreement. Also enter Code 3 for a modification which is the initial citation and obligation of funds for a contract awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(d) *Code 4. Order Under Contract*—Enter this code when reporting orders or amendments to orders, against indefinite delivery type contracts or basic ordering agreements, GSA/DLA schedules, priced exhibits, production lists, job orders, task orders, and the like, where firm obligations are created by the issuance of such documents. Also enter this code for orders issued to other Federal agencies, such as, Federal Prison Industries, National Industries for the Blind, Treasury, Interior, Tennessee Valley Authority, Commerce, etc.

(e) *Code 5. Reserved.*

(f) *Code 6. Additional Work*—Enter this code when additional work is acquired by means of a modification to the basic contract or order (other than an order included in the list in (d) above), as follows:

(i) Bilateral modifications which increase the scope of work of existing contracts but are not authorized by the terms of existing contracts and do not meet the criteria of (iv) below.

(ii) Exercise of options for increased quantities or extended performance, or incremental yearly buys under multiyear contracts.

(iii) Modifications to letter contracts increasing the scope of work, including letter contracts designated as modifications and definitive modifications superseding letter contracts designated as modifications.

(iv) Modifications which are the initial citation and obligation of funds for a supplemental agreement to increase quantities or extend performance that was awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons.

(v) When more than one DD Form 350 is required as outlined in 21-102(a) to report an initial letter contract or new definitive contract, Code 6 shall be used for the second or subsequent DD Form 350; Code 1 or 3 shall be used only for the first DD Form 350.

(g) *Code 7. Funding Action*—Enter this code for letter contract amendments and other contract modifications which do not change the scope of work of the existing contract but obligate or deobligate funds. This includes, by way of illustration, incremental funding (other than incremental yearly buys under multi-year contracts), increasing the estimated cost on cost reimbursement contracts, and repricing actions covering incentive price redetermination, and economic price adjustment. Do not use this code for a modification which is the initial citation and obligation of funds for a contract/modification awarded in one fiscal year but not effective until a subsequent fiscal year because it was contingent on the availability of funds or for other reasons (see 21-122(c) and (f)(iv)). Code 4 shall be used for all transactions under GSA/DLA schedules.

(h) *Code 8. Change Order*—Enter this code when reporting change orders issued pursuant to the "Changes" or "Differing Site Conditions"; or similar provisions of existing contracts.

(i) *Code 9. Termination or Cancellation*—Enter this code when reporting a termination or cancellation action.

21-123 Item 15, Contract Placement. Enter one of Codes 1 through 5, or Code J as appropriate, to show the method used in making the procurement. Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, provisioning order obligating documents, exercise of options, incremental yearly buys under multi-year contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. For modifying actions made pursuant to the provisions of PL 85-804, enter code 5 in Item 15, enter code 17B (PL 85-804) in Item 17, and enter code 5 in Item 18.

(a) *Code 1. Intragovernmental*—Enter this code if the contractor in Item 6 is a Federal Government Agency other than the Department of Defense, *e.g.*, Federal Prison Industries or National Industries for the Blind; or if the procurement action is an order under a contract awarded by another Federal Agency, *e.g.*, orders under General Services Administration Federal Supply Schedules or Government Printing Office contracts. When Code 1 is entered, no entries shall be made in Items 16 through 23.

(i) Orders against contracts placed by Department of Defense purchasing offices shall not be reported as intragovernmental, but shall be reported by the ordering office in all applicable items of DD Form 350 on the basis of information to be furnished by the contracting office. The contracting office shall include in its advice to ordering agencies, specific information on the appropriate codes to be entered in Items 10A, 11, 13 and 15 through 23, as well as information customarily furnished with respect to the contractor and product or service. This subparagraph is not applicable to orders against indefinite delivery type contracts placed by the Defense Fuel Supply Center (21-102(b)(2).

(ii) Purchases from State, local and non-Federal government agencies shall not be reported as intragovernmental, but shall be classified as advertised or negotiated in Item 15, and also as nonprofit organizations in Item 16.

(b) *Code 2. Two-Step Formal Advertising*—Enter this code for new or modifying actions relating to procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids following request for an evaluation of technical proposals in accordance with Section II, Part 5. When Code 2 is entered, no entries shall be made in Items 17 through 19A. Do not use this code if solicitations are restricted to small business (see (d) below).

(c) *Code 3. Other Formal Advertising*—Enter this code for new or modifying actions relating to procurement which resulted from acceptance of a bid made by a supplier in response to formal advertisement for bids, except two-step formal advertisement. When code 3 is entered, no entries shall be made in Items 17 through 19A.

(d) *Code 4. Small Business Restricted Advertising*—Enter this code for Small Business Restricted Advertising which is a form of negotiated procurement conducted in the same way as prescribed for formal advertising under Section II except that bids and awards are restricted to small business concerns (see 1-706.5(b)). When code 4 is entered, the firm in Item 6 must be a small business concern (Code J in Item 16); Code 1B or Code 17A shall be entered in Item 17, as appropriate; and Code 1 shall be entered in Item 18.

(e) *Code 5. Other Negotiated*—Enter this code for new or modifying actions relating to procurement resulting from negotiated procedures (see Section III). When code 5 is entered, the appropriate negotiation exception shall be entered in the code block for Item 17 and the appropriate code shall be entered in Items 18 through 23. Also enter this code for Labor Surplus Restricted Advertising (LSRA) (see DAC #76-15, Item II, 1 June 1978. When reporting LSRA, Code 1A must be entered in Item 17 and Code 1 or 2 in Item 18.

(f) *Code 6. Other Total Small Business Set-Aside.* Enter this Code if the solicitation/award is restricted totally to small business firms under set-aside procedures through conventional negotiation, *i.e.*, other than through Small Business Restricted Advertising (Code 4). (See 1-706.5(b)). When Code 6 is entered, the firm in Item 6 must be a small business concern (Code J in Item 16); Code 1B or 17A shall be entered in Item 17 and Code 1 or 2 shall be entered in Item 18, as appropriate.

(g) *Code J Foreign Military Sales.* Enter this code if the procurement is known to be under Foreign Military Sales arrangements, or under any other arrangements whereby a foreign country or international organization undertakes to bear the cost of the procurement. When Code J is entered no entries shall be made in Items 16 through 22.

1. Code J will be entered for Foreign Military Sales purchases from or through other Federal agencies, *e.g.*, GSA Federal Supply Schedules, except that all awards to Small Business Administration will be reported in accordance with 21-102(e).

2. If only part of a procurement action is of the kind described above, that part (if in excess of $10,000) shall be reported on one DD Form 350, and the other part (if in excess of $10,000) shall be reported on a second DD Form 350.

21-124 Item 16, Type of Business Concern. Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multiyear contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. However, where a modification is for procurement of additional quantities or extends the scope of work under the contract, the size of concern will be determined as of the date of the modifying action.

(a) *Awarded to Large Business Because Small Business:* Enter one of Codes A through D if the contractor is a large concern and the place of performance (Item 7) is within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands (see DoD Procurement Coding Manual, Volume II, page v), as follows:

(i) Enter Code A when no small business source was solicited for a bid or proposal.

(ii) Enter Code B when a small business source was solicited, but no bid or proposal was received from small business, or small business did not offer sufficient quantity to cover total requirements but received award for that portion bid on.

(iii) Enter Code C when a small business source was solicited, but the low bid or proposal was not from small business, or small business was not willing to accept award of a set-aside portion of a procurement at the prices offered as determined by the price the Government would otherwise have had to pay.

(iv) Enter Code D when a small business source was solicited, but small business was not awarded the contract for reasons other than those coded A, B, or C.

(b) Enter Code J, if the award was made to a small business concern as defined in 1-701.1 and the place of performance (Item 7) was within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. Also see 21-102(e) for reporting 8(a) awards to Small Business Administration.

(c) Enter Code L, if the principal place of performance (Item 7) was outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. See DoD Procurement Coding Manual, Volume II, page v.

(d) Enter Code M, N, or P, if the award was made to a nonprofit institution and the place of performance (Item 7) was within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. A nonprofit institution is defined as any corporation, foundation, trust, or institution not organized for profit, no part of the net earnings of which inure to the benefit of any

private shareholder or individual. Included are educational and scientific institutions of a nonprofit nature, and State, local, and other non-Federal government agencies. Enter Code *M* if the contractor in Item 6 is an Educational Institution, Code *N* if a hospital, and Code *P* for all other nonprofit institutions.

(e) Enter Code *R* if the award is made to an overseas firm, and the place of performance (Item 17) is within the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands.

21-125 Item 17, Negotiated Under 10 USC 2304(a) Exception. This entry applies only to negotiated procurement actions.

(a) Negotiation of original contracts and of amendments for additional quantities or services shall cite as authority for such negotiation the authority of 10 U.S.C. 2304(a), which applies as specified by the appropriate "Determination and Findings" or other required Departmental procedure. Negotiations of all other amending actions which are negotiated in accordance with the provisions of the basic contract and have not been made subject to a separate "Determination and Findings" shall cite as authority for such negotiation the authority under 10 U.S.C. 2304(a) which was cited as authority for negotiating the basic contract. If a supplemental agreement is used to award the set-aside portion of a contract to a small business concern which has obtained the non-set-aside portion, separate DD Forms 350 shall be used to report the set-aside and non-set-aside portions (see 1-706.6(d)(2)).

(b) Enter Code 1A to record negotiated actions pertaining to labor surplus area or industry set-asides. Labor Surplus Set-Aside designates a method of procurement whereby a portion of the requirement is withheld from general solicitation (either formally advertised or negotiated), and is reserved for negotiation exclusively with labor surplus area concerns as defined in 1-801.1.

(c) Enter Code 1B to record negotiated actions pertaining to small business set-asides made unilaterally by a Department of Defense contracting officer. Small Business Set-Aside designates a method of procurement whereby either the total amount or a portion of a requirement is withheld from general solicitation and is reserved exclusively for small business concerns. These procurements are considered "negotiated" regardless of whether the contract is awarded by Small Business Restricted Advertising.

(d) Enter Code 1C to record negotiated actions pertaining to major disaster area set-asides. Major Disaster Area Set-Aside designates a method of procurement whereby either the total amount or a portion of a requirement is withheld from general solicitation and is reserved exclusively for firms located in major disaster areas and is to be performed substantially within such major disaster areas.

(e) Enter Code 1E if use of authorities in Exceptions (2) through (17) of 10 U.S.C. 2304(a) is not appropriate in awarding contracts to domestic suppliers for supplies and services in support of the Balance of Payments Program pursuant to Section VI, Part 8.

(f) Enter one of the codes from 2 through 16, as appropriate, when negotiation was accomplished pursuant to 10 U.S.C. 2304(a) (2), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), or (16).

(g) Enter one of the codes from 10-1 through 10-26, as appropriate, when negotiation was accomplished pursuant to 10 U.S.C. 2304(a) (10). The procurement circumstances applicable to the negotiation as described in 3-210.2 are set

forth as 10-1 through 10-18 representing (i) through (xviii). However, Negotiation Exception 10-18 pertains to purchases under Foreign Military Sales arrangement which for reporting purposes does not require an entry in Item 17; therefore, codes 10-18 will not be used. Codes 10-19 through 10-25 may be used for those procurement circumstances which are authorized in Departmental instructions and for additional procurement circumstances later approved and published in the DAR. Enter Code 10-26 if none of the procurement circumstances set forth in 3-210.2 or Departmental instructions is applicable.

(h) Enter Code 17A when reporting Joint Small Business Set-Asides pursuant to 15 U.S.C. 644 (P.L. 85-536), *i.e.*, set-asides agreed to jointly by the Small Business Administration representative and the Department of Defense contracting officer. (See definition of set-aside for Code 1B above.) Enter Code 17B when any other public law authorized the negotiation, and in the space provided specify the number of the public law or U.S. Code citation. For repurchase actions following default, where no other negotiation authority is utilized, enter Code 17B and specify the words "Repurchase Action".

21-126 Item 18, Extent of Competition in Negotiation.

(a) The purpose of this item is to provide statistics reflecting the extent and kind of competition obtained under contracts executed pursuant to the negotiation authorities of the DAR. Detailed information with respect to the presence or absence of competition in negotiated procurement is of vital importance to the Department of Defense. Information obtained from these reports is used throughout the Department for internal management purposes. Additionally, this information is provided to various Committees of the Congress on a continuing basis. It is critically important that this item receive careful attention by reporting activities to ensure its completeness and accuracy.

(b) Provision is made to record the extent of competition as follows:

(i) price competition;
(ii) design, technical, or other competition;
(iii) follow-on actions after price competition;
(iv) follow-on actions after technical or other competition;
(v) other noncompetitive actions;
(vi) catalog or market price actions; and
(vii) not considered for competition.

(c) The following contract actions are exempt from reporting the extent of competition and shall be entered as Code 7:

(i) awards for brand name items for commissary resale;
(ii) awards to nonprofit institutions;
(iii) awards to regulated monopolies for utilities where the price negotiated is based on prices set by law or regulation; and
(iv) awards made pursuant to Section 8(a), Small Business Act (15 U.S.C. 637(a)).

(d) (1) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices. However, a contract may also be reported as "price competition" even though only one offer is received when offers are solicited from at least two responsible offerors who normally contend for contracts for the same or similar items.

(2) Procurements shall not be reported as "price competition" where only one responsive offer was received and the solicitation was restricted to a prime contractor and his vendor for that item.

(3) Multiple awards in such areas as subsistence, clothing and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition," even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition."

(4) Transactions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider the content of the responses to solicitations, the procurement history of the items procured, and other relevant information, and shall exercise sound judgment in the reporting of transactions as "price competition."

(e) Design or technical competition is present when two or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts, and many initial contracts for new military weapons fall into the category of design or technical competition. If some measure of price competition is present but the contract cannot be reported as a "price competition" award consistently with (c) above, the contract should be reported as a "design, technical, or other competition" award.

(f) A follow-on contract means a new procurement (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor to continue or augment a specific military program in instances where such placement was necessitated by prior procurement decisions. Incremental yearly buys under multi-year contracts and exercise of options shall not be included in this category, except as provided in (f)(6) below. An example of a follow-on contract is one which by force of circumstances had to be awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor because he furnished the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (*i.e.*, price or design or technical) will be reported as Code 3 or 4 as appropriate. Follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis will be reported as Code 5. Nothing in the foregoing should be construed as providing authorization for noncompetitive procurement. DAR provisions requiring either formal advertising or competitive negotiation shall be complied with.

(g) Codes 1 through 5 shall be entered as follows:

(1) Enter Code 1 when the award of the contract is based on price competition as defined in (d) above. Awards for set-aside quantities under set-aside procedures shall be included in this category. Also include actions when adequate price competition exists based on catalog or market price (see 3-807). In no case shall cost-reimbursement type contracts be coded 1.

(2) Enter Code 2 when the award of the contract is based on design, technical, or other competition as defined in (e) above. For example, this code shall be entered where evaluation was made of technical or design proposals submitted by several different firms and a determination was made to conduct further negotiations with only one of the firms. Also enter Code 2 where some measure of price competition is present but the contract cannot be reported as a "price competition" award consistently with (d) above.

(3) Enter Code 3 for procurement actions covering follow-on procurement when the original contract was awarded on the basis of price competition as described in (f) above.

(4) Enter Code 4 for procurement actions covering follow-on procurement when the original contract was awarded on the basis of design, technical, or other competition as described in (f) above.

(5) Enter Code 5 to report procurement actions where there was no competition and Codes 3, 4 and 6 do not apply.
in the award and where the work involved was not a follow-on procurement reportable as Code 3 or 4 above.

(6) Enter Code 6 to report noncompetitive actions based on established catalog or market prices but which are not reportable as Code 3 or 4 above.

(7) Enter Code 7 to report contract actions exempt from reporting the extent of competition as listed in (c) above.

(h) Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multi-year contracts and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. However, a modification pursuant to the terms of an existing contract shall not be reported as price competition (Code *1*) unless the basic contract conforms to the definition in (d) above. If a basic contract was reported as price competitive under an earlier definition but does not conform to the definition in (d) above, the modification shall be reported as Code 3, Follow-on Action After Price Competition.

21-127 Item 19, Certified Cost or Pricing Data. Enter Code A or B to identify the applicability of Public Law 87-653 to the current DD Form 350 action being reported.

(a) Enter Code *A* if pursuant to 3-807.3 the contractor was required to submit certified cost or pricing data in connection with the specific procurement action covered by the instant DD Form 350.

(b) Enter Code *B* if the contractor was not required to submit certified cost or pricing data.

21-128 Item 19A, Cost Accounting Standards Clause. Enter the following codes to identify whether or not the contract (original contract and/or modifications) being reported on DD Form 350 includes or is subject to the Cost Accounting Standards clause as required by 3-1204.

(a) Enter Code *1* if the contract includes the clause or in the case of a modification, is subject to the clause.

(b) Enter Code *2* if the contract does not include the clause or in the case of a modification, is not subject to the clause.

21-129 Item 20, Type of Contract. Enter only one of the codes in accordance with the provisions of the basic contract. (See Section III, Part 4.) Where the contract involves more than one type, the predominant type based on dollars shall be entered. However, if any non-predominant portion of a multi-type contract exceeds $500,000, a separate DD Form 350 shall be used to report each such portion of the contract. The total of the DD Forms 350 so reported shall equal the total contract action.

(a) For fixed-price contracts with redetermination clause Type A (see 7-109.2), enter Code *A*; for Type E (see 7-109.3), enter Code B.

(b) Code L shall be entered for a fixed-price incentive contract which contains performance incentive provisions as outlined in 3-407; and Code M shall be entered for an FPI contract without such performance incentive provisions. Similarly, Code V shall be entered for a cost-plus-incentive-fee contract which contains performance incentive provisions; and Code W for one which does not contain such provisions. Care shall be exercised to assure that FPI and CPIF contracts which contain only cost incentives are not coded L or V, but are coded M and W, respectively.

(c) Letter contract amendments, delivery orders against indefinite delivery type contracts, change orders, supplemental agreements, exercise of options, incremental yearly buys under multi-year contracts, and other modifying actions made pursuant to the terms of existing contracts shall be reported the same as the basic contract to which they apply. Modifying actions for additional supplies and services shall be reported according to the pricing provision applicable to the modifying action. If a contract is converted from one pricing provision to another, *e.g.*, from CPFF to CPIF, the DD Forms 350 used to report this adjustment shall reflect only the amount that will be paid under the new pricing provision. When reporting original letter contracts and amendments thereto, enter the type of contract that will most likely be used when the letter contract is converted to a definitive contract.

21-130 Item 21. Subcontracting Program Plan Clause. Enter the appropriate code to indicate which subcontracting program plan clause or clauses (see 7-104.14(b), (c), and (d)) are associated with this procurement action or contract. Enter Code 1 if no subcontracting program plan clause was incorporated; enter Code 2 if only the negotiated clause (see 7-104.14(b)) was incorporated; enter Code 3 if both the negotiated clause (see 7-104.1(b)) and incentive clause (see 7-104.14(d) or any other incentive type clause with the same intent) have been incorporated; and enter Code 4 if the formally advertised clause (see 7-104.14(c)) was incorporated.

21-131 Item 22, Trade Data. The Trade Data elements shown below apply to all supply, service, and construction acquisitions, except those exempt from the Buy American Act.

(a) Subitem A. Enter the number of firms that offered foreign end products. If no firms offered foreign products, enter zero. If the number of firms offering foreign products is 9 or greater, enter 9.

(b) Enter as a two-digit code the percent of the contract award price that represents the foreign content of the item or service acquired. Enter zero as ØØ, 1 through 9 percent as 01 - 09, and 100 percent as 99. This information is required only from the successful offeror.

(c) Subitem C. If the evaluation factor under the Buy American Act is used and results in an award to a firm offering a domestic product, enter the percent difference between the award price and the low firm offering a foreign end product, computed before application of the Buy American Act differential; i.e., the difference divided by the price of the low firm offering a foreign end product. Enter the percentage as a whole number. If the evaluation factor under the Buy American Act is not used, enter zero.

21-132 Item 23. Enter Code 1 if the contract contains one of the clauses prescribed by 7-104.31(a), 7-104.32, or by 7-2003.49, related to the entitlement to the issuance of duty-free entry certificates. Enter Code 2 if only 7-104.31(b) is included or if no clause dealing with this matter is included.

21-133 Item 24, Date of This Action. Enter the year, month and day when a mutually binding agreement was reached. Enter each segment as a two-digit number using 01 through 12 for January through December. For example, enter 2 January 1980 as 80/O1/O2. This shall be the effective date for fiscal obligation purposes. As a general rule, this occurs when a notice of award or fully executed document is manually delivered or placed in the mail to the contractor. In the case of letter contracts, the date to be entered in this block is the date when the signed copy is received from the contractor. For contracts awarded in one fiscal year and not effective until a subsequent fiscal year because they are contingent on the availability of funds or for other reasons, the date shall be the date of the fund availability or the date when the contract becomes effective (see 21-122(c) and (f)). For contracts awarded under the provisions of 1-318(a), the date shall be when the contract becomes effective. The action date shall determine the fiscal year in which the DD Form 350 is reportable. Actions with dates in one fiscal year shall not be assigned report numbers in a subsequent fiscal year. Thus, for example, the first action reported by a purchasing office in fiscal year 1980 must carry an action date of 1979 October 1 or later.

21-134 Item 25, Estimated Completion Date. Enter the year and month it is estimated the work called for by the contract will be completed. Enter each segment as a two-digit number, using 01 through 12 for January through December. For example, enter 80 April as 80/O4. Words such as "continuous," "indeterminate," "unknown," or "100 days after approval of first article," are not acceptable. For basic contracts, the last delivery date shall govern the entry in this item. For supplemental agreements, the entry shall be governed by the delivery date in the specific supplemental agreement rather than the delivery date of the basic contract. For engineering changes, enter the date of delivery of the last end item involved. For spare parts provisioning actions, enter the date of the last spare parts delivery. Where the estimated completion date is not affected by the action being reported, enter the date of delivery of the last end item involved.

21-135 Item 26, Total of This Action. Enter the net amount of funds obligated or deobligated by the contractual instrument being reported. If the action decreases the amount of Government obligation, also enter the symbol "CR" for credit. Do not enter the word "decrease," parentheses, or dashes. Enter whole dollars only; drop cents without rounding. For example, $25,000.10 or $25,000.90 shall be entered as $25,000.

21-136 Item 27 Reserved.

21-137 Item 28, Typed Name and Signature of Contracting Officer or Representative. Self-explanatory.

21-138 Item 29, Telephone Extension. Installations serviced by the Automatic Voice Network shall enter the AUTOVON number plus extension.

21-139 Item 30, Date Submitted.

21-140 Remarks. Use the reverse side of DD Form 350 or attach a separate 8½-inch x 11-inch sheet of paper to explain entries on the form.

Part 2—Monthly Procurement Summary (DD Form 1057)

21-200 Scope and Purpose of Part. This Part prescribes the reporting on DD Form 1057 (set forth in F-200.1057) of procurement actions of $10,000 or less each. This form in conjunction with DD Form 350 is used to prepare recurring and special reports as indicated in 21-101.

This reporting requirement has been assigned Report Control Symbol: DD I&L(M) 1015.

21-201 Applicability and Coverage.

(a) Reports on DD Forms 1057 shall be prepared (*typewritten*) by each purchasing office of the Department of Defense to which a reporting office code has been assigned. Separate codes may be assigned to an installation, base or activity by Volume III of the DoD Procurement Coding Manual in order to distinguish between various types of procurement, such as base and central procurement, or RDTE and non-RDTE procurement. Subject to the approval of the organizations listed in 21-202, a machine printout or other machine product containing the information on the DD Form 1057 may be submitted in lieu of the form.

(b) DD Form 1057 shall include all debit or credit procurement actions of $10,000 or less involving:

(i) appropriated funds;
(ii) contract authorizations;
(iii) stock or other revolving funds which are replenished or reimbursed from appropriated funds,
(iv) appropriated funds transferred to the Departments, such as Military Assistance Program funds; and
(v) appropriated funds obligated pursuant to provisions of Public Law 85-804 (see 21-123).

Procurement actions include definitive contracts, purchase orders, notices of award, delivery orders or calls (except those against indefinite delivery type contracts entered into by the Defense Fuel Supply Center), work orders, work requests, service orders, task orders, orders against blanket purchase agreements, imprest (petty cash) fund transactions, any other orders against existing contracts, and debit and credit actions that modify a contract, such as modifications, change orders, supplemental agreements, cancellations, and terminations.

(c) The report shall exclude actions of $10,000 or less which:

(i) involve nonappropriated funds;
(ii) are delivery orders against indefinite delivery type contracts entered into by the Defense Fuel Supply Center; Defense Fuel Supply Center shall report the estimated total cost of indefinite delivery type contracts;
(iii) are requisitions transferring supplies within and among the Departments and Agencies of the Department of Defense;
(iv) are placed by the Defense Communications Agency, Defense Commercial Communications Office (DECCO). These actions are covered by other reporting instructions;
(v) are orders on GSA stores depots;
(vi) involve Government bills of lading or transportation requests; and

(vii) are for purchase of land, or rental or lease of real property.

21-202 Due Date and Distribution.

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month. To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date is extended by 10 additional calendar days, but the cut-off date must be as of 30 September.

(2) Negative reports shall be submitted if a contracting office has not transacted a reportable action during the month.

(3) Letter of transmittal is not required.

(b) *Army* contracting offices shall distribute DD Form 1057 as follows.

(1) The original (except from Engineer Civil Functions contracting offices) shall be forwarded to HQDA (JDHQ-SV-W-P), Washington, D.C. 20310.

(2) Engineer Civil Functions contracting offices shall forward the original to HQDA (DAEN-PRP), Washington, D.C. 20314. A copy is not required for HQDA.

(c) Navy field contracting offices shall forward the original DD Form 1057 to the Head of the Contracting Activity from which contracting authority was received, with the exception of the Navy Aviation Supply Office (ASO) and the Ships Parts Control Center (SPCC). ASO and SPCC shall forward their reports to the Naval Supply System Command Headquarters. Heads of Contracting Activities shall review and correct the feeder reports, prepare a consolidated DD Form 1057 and submit the consolidated report to Headquarters, Naval Material Command, Washington, D. C. 20360, Attn: MAT 08C14

(d) *Air Force* contracting offices shall forward the original DD Form 1057 to AFLC/ACOCS, Wright-Patterson AFB, Ohio 45433. Separate reports shall be submitted by each activity which has been determined to be a separate reporting office. Air Force contracting offices, except those under AFLC and AFSC shall forward one copy to the appropriate major command headquarters staff contracting office or division.

(e) *Defense Logistics Agency* contracting offices shall forward the original DD Form 1057 to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Alexandria, VA, 22314, ATTN: DLA-PA.

(f) All other contracting offices of the Department of Defense shall forward the original DD Form 1057 to HQDA (JDHQ-SV-W-P), Washington, D. C. 20310.

(g) Procurement actions of $10,000 or less which are reportable in accordance with 21-201 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in Appendix N.

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057

21-203 Terms Used. The terms used in DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350. (See Section XXI, Part I.)

21-204 Heading.

(a) *Reserved.*

(b) *Month Ending*—Enter the year, month and day indicating the ending date of the month reported.

(c) *Contracting Office and Mailing Address*—Enter sufficient detail to establish the identity of the contracting office submitting the report.

(d) *Reporting Office Code*—Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item 5 of DD Form 350.

21-204.1 *Number of Actions.*

(a) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (b) below, each call or order under a blanket purchase agreement, imprest fund, requirements type contract, or indefinite delivery indefinite quantity contract shall be counted as an action. A definite quantity indefinite delivery contract shall be counted once at the time of award, and orders under such contracts shall not be counted. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(b) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $10,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(i) meals and lodging;

(ii) automatic deliveries, such as, bread, milk, and ice cream,

(iii) utilities, such as, electricity, gas, and telephone.

(Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on utilities contracts for all Naval Shore Establishments).

21-204.2 *Dollar Value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. For example, $2,510.10 or $2,510.90 shall be reported as $2,510. Do not enter $2,510.00 or $2,510.-. If the net amount is a decrease, enter the symbol "CR" immediately following the amount to signify a credit entry. Do not enter parentheses or dashes. whole dollar. (Do not enter cents.) For example, $2,510.50 shall be reported as $2,511; $1,834.49 shall be reported as $1,834. If the net amount is a decrease, enter the symbol "*CR*" following the amount to signify a credit entry.

21-205 Section A, All Procurement Actions of $10,000 or less.

(a) Enter on Lines 1 through 4 the number and value of actions of $10,000 or less according to type of contractor (*i.e.*, small business, large business, educational and nonprofit institutions), and for work outside the U.S., according to whether the actions were advertised or negotiated.

(b) Report on Line 5*a* orders under GSA Federal Supply Schedules. Orders under Veterans Administration contracts published in GSA Federal Supply Schedules shall be reported on Line 5*b*.

(c) Report on Line 5*b* purchases from or through other Federal agencies.

(d) Report on Line 6 transactions involving Foreign Military Sales (see 21-123(g))

(e) Enter on Line 7 the totals of Lines 1 through 6.

(f) Purchases from overseas exchange and educational services (*e.g.*, European-Korean Exchange Systems) shall be reported on line 4b of Section A and line 6 of Section B.

21-206 Section B, Negotiated Actions.

(a) Enter the number and dollar amount of negotiated actions of $10,000 or less according to the authority of 10 U.S.C. 2304(a) which was used. The totals of Lines 1 through 17 in Section B shall equal the sums of the entries on Lines 1*b*, 2*b*, 3*b*, and 4*b* in Section A.

(b) Enter on line 3A the number and dollar value of actions of $10,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are small business-small purchase set-asides in accordance with 1-702(c) and 3-603.1(g).

(c) Enter on line 3B the number and dollar value of actions of $10,000 or less which were negotiated under 10 U.S.C. 2304(a)(3) and are not small business-small purchase set-asides in accordance with 1-702(c) and 3-603.1(g).

(d) The following provision is applicable only to U.S. Army Troop Support Agency Activities. In lieu of separately tabulating nonfood/food transactions for commissary resale items that are reportable under negotiation authority 10 U.S.C. 2304(a)(8) and (9), a ratio of the total shall be reported as follows:

(1) Enter 26% of the total actions on Line 8 and 74% on Line 9.

(2) Enter 37% of the total dollar value on Line 8 and 63% on Line 9.

21-207 Section C, Research Development, Test and Evaluation Actions. (These actions are also reported in Sections A and B). Enter the number and dollar amount of actions of $10,000 or less for research, development, test and evaluation work on Lines 1 through 4. Do not include purchases of supplies or services that are incidental to the fulfillment of RDTE work but do not require contractor RDTE performance (see 21-116(a)).

21-208 Section D, Competition in Negotiated Actions.

(a) In order to better represent competitive award data within DoD, certain contract actions of the types specified in 21-126(c) are exempt from reporting under this Section D and are to be separately identified in line 3 of this section.

(b) Enter on line 1 the number and dollar amount of those negotiated actions considered for competition that were determined to be price competitive in accordance with the criteria set forth in 21-126(d) and 21-126(g)(1).

(c) Enter on line 2 the number and dollar amount of those negotiated actions considered for competition that were determined not to be price competitive.

(d) Enter on line 3 the number and dollar amount of those negotiated actions meeting the requirements of 21-126(c) which are exempt from reporting under this Section D.

(e) Enter on line 4 the sums of entries on lines 1, 2, and 3 of Section D. The line 4 totals shall equal the totals on line 18 of Section B.

21-209 Section E. Small Disadvantaged Business Actions (see 1-707.3).

(a) Enter on line 1 the number and dollar amount of awards made to small disadvantaged business concerns that were made through the Small Business Administration pursuant to the Small Business Act - Public Law 85-536, Section 8(a). Entries on this line shall also be reflected on line 17B of Section B.

(b) Enter on line 2 the number and dollar amount of awards made directly to small disadvantaged business concerns.

(c) Enter on line 3 the sums of the entries on lines 1 and 2 of Section E.

21-210 Section F, Women-Owned Business Actions (see 7-2003.80).

(a) Enter on line 1 the number and dollar amount of those awards shown in Section A, Line 2, that were made to women-owned business concerns.

(b) Enter on line 2 the number and dollar amount of those awards shown in Section A, line 1, that were made to women-owned buisness concerns.

(c) Enter on line 3 the sums of entries on lines 1 and 2 of Section F.

21-211 Adjustments. Revised DD Form 1057 reports shall not be submitted, but the amounts of corrections or adjustments, if required, shall be included in the report for the following month. If the correction or adjustment results in a net reduction of either action or dollar amounts, enter the symbol "*CR*" following the amount to signify a credit entry.

Part 3—Report of Individual Contract Profit (DD Form 1499)

21-300 Scope and Purpose of Part. This part prescribes the reporting on DD Form 1499 (F-200.1499) of cost and profit plans on contract actions of $500,000 or more, negotiated by specified contracting offices. The form provides a basis for analyzing profit patterns and weighted guidelines objectives on defense contracts. As used in this part, the term *cost* includes target cost as well as estimated cost, and the term *profit* includes fee.

21-301 Applicability. DD Form 1499 shall be prepared by each contracting office of the—

(i) Army Materiel Development and Readiness Command, Ballistic Missile Defense Systems Command, Defense Supply Service, Washington, and U.S. Army Corps of Engineers;

(ii) Air Force Logistics and Systems Commands; and

(iii) Naval Air, Sea, and Electronic Systems Commands, Naval Facilities Engineering Command, Naval Regional Contracting Office, Philadelphia. The form also shall be prepared by the following Navy activities of the Naval Supply Systems Command: Navy Aviation Supply Office, Philadelphia; Navy Ships Parts Control Center, Mechanicsburg; and Naval Regional Contracting Office, Long Beach. Contracting offices located outside the United States, its possessions, and Puerto Rico, under the jurisdiction of the above-mentioned commands, are exempt from this reporting requirement.

21-302 Coverage.

(a) A DD Form 1499 shall be prepared by the contracting offices described in 21-301 for each negotiation of a contractual agreement involving a separate cost and profit that together total $500,000 or more. This negotiated total may agree, but not necessarily, with the amount obligated by the contractual instrument. The instrument may be a new definitive contract, an indefinite delivery-type contract, the definitization of a letter contract, or order under a basic ordering agreement, a supplemental agreement, or any other action in which the contracting officer and contractor negotiate an estimated cost and profit. If, in connection with a fixed-price-type contract or contract modification, the contracting officer requires the contractor to submit cost or pricing data pursuant to 3-807.3, a DD Form 1499 shall be prepared showing the contracting officer's best estimate of cost and profit.

(b) If more than one profit rate applies to a negotiation and the amount for each rate is $500,000 or more, a separate DD Form 1499 shall be used to report data for each rate. If the dollar amount for any profit rate of a multirate negotiation is less than $500,000, the data for the amount below $500,000 shall not be reported. If the separation of a contract into different rates produces no portion of $500,000 or more, a report on DD Form 1499 shall not be submitted.

(c) If any reportable negotiation includes a cost or cost-sharing portion or a firm fixed-price portion not reportable pursuant to (a) above, that portion shall not be reported on DD Form 1499. If the application of this provision fragments

E-315.10 In cases involving several contracts or subcontracts, including contracts or subcontracts relatively minor in relation to dollar amounts of other contracts involved, the processing of certificates of eligibility should not be delayed pending determinations concerning the relatively minor contracts. When any office within a procuring activity has on hand information concerning the substantial preponderance of amount of contracts with which it is concerned, its action concerning the certificate of eligibility should be completed without awaiting information on which to make determinations or recommendations concerning minor contracts. Basically, in situations involving numerous contracts, the determination as to eligibility should be founded upon the need of the prospective borrower's operation in the defense production program, and if his operation is considered necessary for performance of substantial preponderance of his contracts, it usually should be unnecessary to make determinations concerning the eligibility of any particular minor contracts.

E-315.11 When a contracting officer or other person within a procuring activity responsible for processing requests for certificates of eligibility has reason to believe that an application for loan guarantee has been filed or is about to be filed, relating to a contract or subcontract within his cognizance, he should, without awaiting request for a certificate of eligibility or request for information bearing on issuance of a certificate of eligibility, initiate the completion and transmittal of such information and certificate to the appropriate office within his Department, for forwarding to the contract financing office within the Department.

Part 4—Advance Payments

E-400 Scope of Parts—References. This Part covers policy and procedure for advance payments on prime contracts, including advance payments on subcontracts under all types of prime contracts. It applies to all advance payments hereafter authorized pursuant to any legislation or other authority, except as provided in E-419. It is to be applied in conformity to the policies stated in Part 2. Paragraphs E-000, E-001, E-002, E-003, E-100, E-103, E-104, E-107.2, and E-107.3 are also applicable to advance payments.

E-400.1 *Advance Payments on Subcontracts.* The policies, standards and procedures of this Part 4 are applicable to advance payment to subcontractors under all prime contracts, including fixed-price types and cost-reimbursement types of prime contracts. For the prime contractor to receive advances for or to be reimbursed for such advance payments, it is required that the prime contract make provision for advance payments conforming to these regulations, with appropriate provision for advance payments by the prime contractor to subcontractors or suppliers. See paragraph (17) of the clause in 7-104.34.

E-401 Types of Contracts That May Have Advance Payments. Advance payments may be made on any approved type of contract as defined in 1-201.4.

E-402 Advance Payments in Addition to Progress Payments. Where necessary and in accordance with these regulations, advance payments may be authorized in addition to progress payments on the same contract. See E-508.

E-403 Interest.

(a) Interest will be charged on all advance payments hereafter authorized at either (i) the published prime rate of the banking institution (Depository) in which the special bank account (E-413) is established, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater. It will be a floating interest rate (non-fixed) depending on the prime rate of the Depository which is subject to fluctuations and the semiannual determination by the Secretary of the Treasury under Public Law 92-41. The prime rate and the changes therein during the month will be obtained from the Depository on the last business day of each month. Interest will be computed at the end of each month upon the daily unliquidated balance of advance payments at the applicable daily interest rate. However, advance payments may be approved without interest when in connection with (i) cost type contracts with nonprofit educational or research institutions for experimental, research and development work; (ii) nonprofit contracts in the dependents' medical care program; (iii) contracts solely for the management and operation of Government-owned plants; (iv) cost type contracts with governments or instrumentalities thereof; or (v) unusual cases when specifically authorized by the Under or Assistant Secretary responsible for the comptroller function. In this connection, contracts for acquisition of facilities at cost, for

Government ownership, in combination with or in contemplation of supply contracts or subcontracts, will be treated as ordinary profit contracts requiring interest on advance payments.

(b) Contracts with interest-free advance payments hereafter authorized should provide that the contractor will charge interest in accordance with the above paragraph on advances to subcontractors, and that interest charged on such will be credited to the account of the Government. However, interest need not be charged on advances on cost-reimbursement contracts with nonprofit educational or research institutions for experimental, research, or development work.

(c) Interest on advance payments will not be allowed as cost under any cost-reimbursement contract nor cost-reimbursement subcontract thereunder, and no such contract or subcontract may provide for allowance of such interest as an item of cost.

E-404 Standards—Amounts—Need.

(a) Advance payments should be used sparingly and care should be taken to see that advances outstanding are sufficient for but do not exceed the actual reasonable requirements for the contracts. The amount of the advance payment in any case should be based upon an analysis of the cash flow required under the contract, and as a general rule should not exceed the interim cash needs arising during the reimbursement cycle.

(b) Generally, except for (i) cost type contracts with nonprofit educational or research institutions for experimental, research and development work, and (ii) contracts solely for the management and operation of Government-owned plants, advance payments should not be authorized unless no other means of adequate financing is available to the contractor (not including loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from agencies of the Government outside the Department of Defense), and the amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

E-405 Statutory Requirements. The authorizing statutes (E-103) apply equally to negotiated contracts and to contracts awarded or to be awarded by formal advertising. It is required for all advance payments, that—

(i) the contractor give adequate security (E-413);

(ii) the advance payments shall not exceed the unpaid contract price;

(iii) the making of advance payments is in the public interest, as determined by the authorized official concerned (E-406 and E-406.1), when the action is pursuant to the authority of Title 10 U.S.C. Section 2307;

(iv) the making of advance payments will facilitate the national defense, as determined by the authorized official concerned (E-406 and E-406.1), when the action is pursuant to P.L. 85-804, and Executive Order No. 10789; and

(v) a provision providing for such payments where it is estimated that it will result at some time in unliquidated advance payments exceeding $25 million; such a provision shall not be inserted in any contract unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period.

E-406 Responsibility—Delegation of Authority. Except as provided in E-406.1, the responsibility and authority for making findings and determinations with respect to advance payments, and in each case for approval of contract provisions for advance payments, or for approval of the terms and conditions thereof, shall be in the Under or Assistant Secretary responsible for the comptroller function in each Military Department, or the authorized deputy of either of them. However, no agreement for advance payments shall be entered into by any such designated authorities without the prior written coordination of the Office of the Director of Defense Research and Engineering if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for payments, other than partial, progress, or other payments specifically provided for in contracts at the time such contracts were initially entered into would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000. The Government may not be committed, in any manner directly or indirectly to make an advance payment without the approval of the Under or Assistant Secretary responsible for the comptroller function, or the authorized deputy of either of them (or in appropriate cases, of a person to whom advance payment approval authority has been delegated in accordance with E-406.1), and no procurement involving advance payments may become final until such approval is obtained.

E-406.1 *Delegation of Authority.* The authority in each case to make findings and determinations with respect to advance payments and to approve contract provisions for advance payments, or to authorize the terms and conditions thereof, may be delegated within each Department no further than, to the Comptroller of the Army (and an alternate within his office) in the Department of the Army; to the Director of Contract Financing (and an alternate within his office) in the Department of the Navy; to the Assistant for Banking and Contract Financing, Office of the Assistant Secretary of the Air Force (Financial Management); and to the Comptroller, Defense Logistics Agency, or an alternate responsible to him. For other Departments (1-201.5), this delegation of advance payment authority may be only to the Comptroller of the Agency, or an alternate responsible to him. However, to the extent deemed necessary or prudent and efficient under exceptional circumstances, further delegations of this advance payment authority may be made with the approval of the Director of Defense Research and Engineering.

E-407 Public Law 85-804—Formally Advertised Contracts.

(a) Pursuant to Public Law 85-804, and Executive Order No. 10789, as amended, the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force are authorized to make advance payments under contracts heretofore or hereafter made, without regard to other provisions of law relating to contracts, including advance payments under contracts awarded on competitive bids after formal advertising, and to amend such contracts to provide for advance payments. No contract or amendment or modification of any contract shall be entered into under the authority of this Act which would provide for unliquidated advance payments in an amount in excess of $25,000,000, unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed obligation and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such obligation. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. Furthermore, no agreement for advance payments shall be entered into by any officials of the above designated Departments under the authority of this Public Law without the prior written coordination of the Office of the Under Secretary of Defense Research and Engineering if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for unusual progress or advance payments, would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000.

(b) Pursuant to the above statute and executive order (as well as 10 U.S.C. 2307) and subject to these regulations, advance payments may be granted at or after awards of contracts made on competitive bids after formal advertising (as well as on negotiated contracts) notwithstanding the absence of provision for or with regard to advance payments in the invitations for bids. Bids will be rejected if they are conditioned, qualified, or limited in such way that binding awards can be made only with provision for advance payments. Bids shall not be treated as nonresponsive because they contain, or are accompanied by or supplemented by request for advance payments or other indication that advance payments are desired or needed, so long as the advance payment aspect is not a condition,

qualification or limitation of the bid. In the cases mentioned in the previous sentence, or if the need for advance payments becomes apparent in the course of inquiry as to whether the necessary funds will be available for performance by the prospective contractor, (i) the award may be made with provision for advance payments, in conformity with these regulations, or (ii) the award may be made without provision for advance payments if the prospective contractor is determined to be a responsible contractor and advance payments are considered not necessary, or (iii) the award may be denied because funds for performance are not otherwise available to the prospective contractor and the making of advance payments has been declined in accordance with these regulations.

E-407.1 *Special Contract Provisions.* All contracts providing for advance payments under the authority of the above-cited Act (Public Law 85-804) and Executive Order shall:

(i) make reference to the Act and Executive Order; and

(ii) include appropriate clauses required by the Act and Executive Order (17-102), or by other applicable regulations. See 7-104.15 and 7-402.7.

E-407.2 *Data.* Complete data shall be maintained by each Department as to all contracts and amendments to contracts relating to advance payments made pursuant to the above-cited Act (Public Law 85-804) and Executive Order.

E-408 Uses of Advance Payments. Advance payments are last in the general order of preferences stated in E-209. Subject to the provisions of these regulations, advance payments are considered useful and appropriate for (i) cost type contracts with nonprofit educational or research institutions for experimental, research and development work (E-404); (ii) contracts solely for the management and operation of Government-owned plants (E-404); (iii) contracts for acquisition of Government production and research property under facilities contracts (see 13-101.11); (iv) contracts involving operations so remote from a financing institution that the financing institution could not be expected to provide suitable administration of a guaranteed loan; (v) contracts of such highly classified nature that the Department considers it undesirable for national security to permit assignment of claims under the contract; (vi) rare but essential contracts of those contractors, unusually weak or overextended financially, in those cases in which performance may be better fostered and risks of financial loss most effectively minimized by very close control of funds and supervision of performance by personnel of the Department concerned; (vii) contracts for the financing of which a financing institution will not (A) assume a reasonable portion of the risks under a guaranteed loan, or (B) provide funds except at excessive interest rates or other exorbitant charges; and (viii) exceptional cases in which the utilization of advance payments will be more beneficial to the interest of the Government than any other available method of financing. Circumstances will occur, especially on contracts with small business concerns, in which advance payments will be more beneficial to the interest of the Government and more suitable to the situation of the contractor than other methods of contract financing. If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hesitation in recommending to higher authority that advance payments be established.

E-409 Standards for Advance Payment Determinations—All Contracts. It is not required for the granting of advance payments that the contractor be the sole or only source or prospective source for the required supplies or services. Important practical factors include comparative prices, urgency of supply schedules, and the time and expense involved in arranging other sources or in reletting contracts. The governing principles and standards for decision as to whether to make or approve the necessary determinations for advance payments are those set forth in this paragraph and E-202 through E-212, E-404, E-405, E-407, and E-408. Affirmative recommendations should be made in favor of granting advance payments when (i) advance payments are necessary to supplement other funds or credit available to a contractor or prospective contractor, (ii) the contractor or prospective contractor is otherwise qualified as a responsible contractor (1-903.1, 2-407, E-211), (iii) there will be a benefit to the Government from performance prospects or other practical advantages, and (iv) the case is within one or more of the categories described in E-408. These recommendations should be approved unless the responsible contract financing office (E-212), or the Under or Assistant Secretary or other official concerned (E-406 and E-406.1), considers that under all the relevant circumstances the making of advance payments would be unreasonable or imprudent or would involve undue risks of monetary loss to the Government, or would otherwise fail to conform to these regulations.

E-410 Findings, Determinations, and Authorization. The following is the standard text of findings, determinations, and authorization (E-412(vi)) for use in establishing advance payments.

FINDINGS, DETERMINATIONS, AND AUTHORIZATION FOR ADVANCE PAYMENTS

FINDINGS

(DEC. 1980)

1. I hereby find that:

a. The ..... (*Procuring Activity*) and ..... (*Contractor*) (propose to enter) into negotiated (formally advertised) Contract No. ....., (dated .....).

Summary of the specific facts and significant circumstances concerning the contract and Contractor, which, together with the other findings, will clearly support the determinations below.]

b. Advance payments (in an amount not to exceed $..... at any time outstanding) (in aggregate amount not exceeding $....., less the aggregate amounts repaid, or withdrawn by the Government) are required by the Contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price, nor the estimated interim cash needs arising during the reimbursement cycle.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will be of benefit to the Government.

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for the advance payments. These include provision that all payments will be deposited in a special bank account, and that the United States will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

[*In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, insert the following paragraph instead of d. above.*]

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for advance payments. These include provisions that the outstanding advance payments will be liquidated from cost reimbursements as they become due the contractor, and the United States will have a paramount lien upon (1) any supplies contracted for and (2) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

e. Within the meaning of applicable regulations, no means of adequate financing other than by advance payments are available to the Contractor, and the amount designated above is predicted upon the use of the Contractor's own working capital to the extent possible in performing the contract.

f. The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work.

g. The contract is solely for the management and operation of a Government-owned plant.

h. The following unusual facts and circumstances favor the making of advance payments to the Contractor without interest.

[*Recitation of pertinent facts and circumstances*]

DETERMINATIONS

2. Upon the basis of the foregoing findings, I hereby determine that the making of the proposed advance payments with interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 , on the unliquidated balance of such advance payments (without interest except as provided by the proposed advance payment clause) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

3. Such advance payments, of which (the amount at any one time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed $....., are hereby authorized pursuant to (10 U.S.C. 2307, as amended) (The Act of August 28, 1958, as amended, Public Law 85-804, 72 Stat. 972, amended by 87 Stat. 615 (1973), and Executive Order No. 10789, as amended), upon (terms and conditions substantially as contained in the proposed advance payment clause of which copy (or outline) is annexed hereto) (the following terms and conditions:)

(All prior advance payment authorizations with respect to Contract No. .....: are hereby superseded.)

.....(*Name typed*)

.....(*Title of authorized official*)

Instructions:

1. On requests for advance payment provisions, this document will be prepared, in final form for signature of an authorized official (E-406), by such office as may be designated by the procedures of each Department. It will include such of the paragraphs set out above as are appropriate. (See below.)

2. Words and expressions in parentheses and blank spaces in the above paragraphs indicate choices of language, depending upon the facts pertinent to a particular request. Forms will *not* be prepared in advance which include all of the above paragraphs and all of the alternate language. Each "Findings, Determinations, and Authorization" will be prepared separately to include only those paragraphs and those words (including statutory references) which are pertinent to the particular request.

3. Each such "Findings, Determinations, and Authorization" must include paragraphs 1.a., 1.b., 1.c., 1.d., 2 and 3. Paragraph 1.e will not be included in the case of cost type contracts with a nonprofit educational or research institution for experimental, research and development work, or in the case of contracts solely for the management and operation of Government-owned plants. Paragraph 1.f., 1.g., or 1.h., as appropriate, will be included if the advance payments are to be made without interest to the contractor. The last sentence of paragraph 3 will be included if any advance payments have previously been authorized for the contract. The numbering and lettering of the paragraphs in the completed "Findings and Determinations" will then run consecutively, based on the paragraphs actually used.

4. Modifications to adapt to special facts and circumstances are permitted.

5. 10 U.S.C. 2307 normally will be the statutory authority cited for the advance payment. The Act of August 28, 1958, and Executive Order No. 10789 are reserved for extraordinary situations not falling within the purview of 10 U.S.C. 2307.

E-411 Application for Advance Payment. The contractor's application for advance payment, whether incident to the making of a contract or by way of amendment or supplemental agreement for advance payments under an existing contract, may be in the form of a letter request or other writing. The application should refer to the contract or proposed contract under which advance payments are requested, and should include or be accompanied or supported by—

(i) Cash flow forecast (E-214(f), E-214.1, E-214.2) (limited to estimated cash flow for the contract or contracts to be financed by advance payments when the contracts are of the kinds mentioned in E-408(i) or E-408(ii)):

(ii) Proposed amount of advance payments;

(iii) Name and address of bank suggested as depository for the advance payment special account (this item is not applicable where the alternate method of advance payments under E-413.1 below is to be used);

(iv) Except for contracts mentioned in E-408(i) and E-408(ii), description of efforts made to obtain private financing, including guaranteed loan; and

(v) Such other information and data (E-214) as may be appropriate under the circumstances of the case for the purposes outlined in E-214 (of which, ordinarily, information concerning reliability, technical capability, and adequacy of accounting system and controls should be sufficient for contracts mentioned in E-408(i) and E-408(ii).

E-412 Action by Contracting Officer—Approval. After such investigation as may be appropriate, and analysis of the request and information submitted by the contractor, the contracting officer should transmit to the appropriate office within his Department, with such number of copies as may be required within the Department:

(i) Date and identifying symbol of the approval of the award, citation of the appropriation available, type of contract, dollar amount of contract, the items to be supplied, and schedule of deliveries or performance, status of performance and deliveries, if any contemplated profit or fee, and (unless excepted by instructions of the Department concerned) copy of contract, if available;

(ii) The request and information furnished by the contractor;

(iii) Report of investigation, including past dealings with the contractor, and comment on the character and responsibility of the contractor, technical ability, and plant capacity;

(iv) Comment on (A) the need for the advance payments for performance of the contract, and (B) the benefits to the Government from the contemplated contract performance;

(v) Proposed advance payment contract provisions or supplemental agreement, including proposed security provisions, unless those are to be provided by the contract financing office or other office;

(vi) The appropriate findings, determination and authorization (E-410) (for signature by the approving authority), unless those are to be provided by the contract financing office or other office;

(vii) Recommendation that the advance payment be approved; and

(viii) Justification of proposal, if any, for waiver of interest charge (E-403).

E-412.1 *Action by Contracting Officer—Disapproval.* If the contracting officer determines that the requested advance payment should be disapproved, the contractor's request, information submitted, report of investigation (if any), and statement of reasons for adverse determination should be sent forward immediately to the appropriate contract financing office (E-212). This information may be useful in connection with existing or prospective arrangements for other financing, and for such further action as may be appropriate to enhance uniform application of these regulations.

E-413 Security—Supervision—Covenants.

(a) The advance payment agreement, under any applicable statute, should provide for deposit of all payments into special bank accounts, unless the alternate method of advance payments under E-413.1 below is to be used, and should include suitable covenants to protect the Government's interest. Advance payments under such authorization should be limited to the contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon the material and other property acquired for performance of the contract, except to the extent that the Government has valid title thereto.

(b) Because of the variations in circumstances of individual cases, no fixed rule can be prescribed for determining adequacy of security in a particular case. The minimum security will be that required by the provisions of approved contract forms, supplemented by such further provisions and arrangements, if any, as may be considered appropriate for the protection of the Government under the circumstances of each case. Advance payment bonds usually will not be required. When and to the extent deemed necessary and appropriate special security provisions will be required, such as, for example, personal or corporate endorsements or guarantees, pledges of collateral, subordination or standby of other indebtedness, and controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, debt retirement or stock retirement, and creation of additional obligations.

E-413.1 *Alternate Procedure for Advance Payments Without a Special Bank Account.* In view of the nonprofit position of educational and certain research institutions and the Government objective of strengthening the research capabilities of these institutions, advance payments in reasonable amounts will be made, when prudent and practical, on experimental, research and development contracts with such institutions by interest-free advance payment arrangements, without the use of either special bank accounts or letters of credit. The advance payments will be periodically made directly to the institutions under the procedure described below:

(a) The contract clause set forth in 7-104.34 for advance payments will be used; however, in lieu of the requirements relative to a special bank account, there will be provisions for advance payments directly to the contractor to meet its contractual cash needs for the shortest practical periods of time to cover contract performance. The contractor shall periodically determine its cash requirements for performance of pool contracts and submit a statement (request) for an advance payment, in an acceptable format with supporting information as prescribed by the administering office, to the Administrative Contracting Officer or other designated approving official who will determine the necessity for the advance payment. If the approving official concurs with the amount of advance payment requested by the contractor, the request will be promptly approved and forwarded to the designated disbursing office for payment. In the event that the approving official determines that the amount of advance payments requested for the specified period is in excess of the contractor's need for such period, the request will be approved and forwarded to the disbursing office for payment of only that amount determined by the approving official to be needed by the contractor. The approving official will act promptly, in

accordance with contract or pool agreement terms and departmental procedures, to resolve any disagreement on the unapproved portion of the request for an advance payment.

(b) The contractor shall submit cost reimbursement vouchers under its contracts being financed by advance payments to the therein designated disbursing office on at least a monthly basis. The proceeds from the payments that would otherwise be due the contractor under such vouchers will be applied in liquidation of the outstanding advance payments. If the payments due exceed the outstanding advance payments, the proceeds will first be applied to fully liquidate the outstanding advance payments and the remaining balance due will be paid to the contractor. The amount otherwise due the contractor under such cost reimbursement vouchers should never exceed the outstanding advance payments under normal operations, except upon implementation and/or termination of an advance payment arrangement. This is because all of the financing under the applicable contracts is provided under the advance payment arrangement and there is always a time lag in submission of vouchers for materials and/or services previously provided by the contractor.

(c) The advance payments will be requested, approved, and paid based on estimates. There will be a variance between the contractor's estimated and actual cash requirements for each period. These variances represent over or under financing by the Government and could become significant. Consequently, these variances must be identified and taken into consideration with each new request for an advance payment. This is a joint responsibility of the contractor and the approving official.

E-414 Forms of Contract Provisions and Supplemental Agreements. The approved forms for agreement covering advance payment special bank accounts, and approved forms of advance payment contract provisions and supplemental agreements for use in connection with the several types of approved contracts are set out below. Variations from the approved forms of contract provisions for advance payments should be made only when necessary in exceptional circumstances, with the approval of the person having authority to approve the particular advance payment contract involved. With regard to variations, it is recognized, for example, that there may be exceptional circumstances in which it will be beneficial to the Government to modify E-414.1(b) and the second sentence of paragraph (7) of the clause in 7-104.34.

E-414.1 *Form of Agreement for Special Bank Account.* For all advance payments substantially the following form of agreement will be used for the special bank account or accounts:

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36567

AGREEMENT FOR SPECIAL BANK ACCOUNT (DEC. 1980)

AGREEMENT entered into this ..... day of ..... , 19....., between the UNITED STATES OF AMERICA, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, ... , a corporation under the laws of the State of ..... , hereinafter called the Contractor, and ..... , a banking corporation under the laws of ....., located at ..... , hereinafter called the Bank

RECITALS

(a) Under date of ....., 19....., the Government and the Contractor entered into Contract(s) No. ....., or a Supplemental Agreement thereto, providing for the making of advance payments to the Contractor. Copy of such advance payment provisions has been furnished to the Bank.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "..... (*Name of Contractor*), ... (*Department*), Special Bank Account."

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that—

(1) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the Bank with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the Administering Office designated in the advance payment contract mentioned above, or from the duly authorized representative of the Contracting Officer or the Administering Office, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank through the Contracting Officer upon Department of the ..... stationery and purporting to be signed by, or by the direction of ..... or his duly authorized representative, shall, in so far as the rights, duties and liabilities of the Bank are concerned, be conclusively deemed to have been properly issued and filed with the Bank by the Department of the .....

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of this Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify ..... (*Administering Office*).

(5) The Bank will advise the Government of its published prime interest rate and the changes therein during the month on the last business day of each month so long as this Special Bank Account remains in existence. (This covenant will not be included in Special Bank Account Agreements covering interest-free advance payments.)

IN WITNESS WHEREOF the parties thereto have caused this agreement to be executed as of the day and year first above written.

(Signatures and Official Titles)

E-414.2 *Advance Payment Provisions.* Approved contract provisions for advance payments, with directions for use where appropriate, are in 7-104.34.

E-415 Pooled Advance Payments—General. Advance payments are sometimes useful and convenient for financing the performance of more than one contract, under a single advance payment agreement. Such an agreement is called an advance payment pool agreement. An advance payment pool agreement may be entered into as a separate agreement for advance payments, or may be incorporated initially in a contract for supplies or services, or added to such a contract by amendment or supplement. Advance payment pool agreements are especially convenient for the financing of cost type contracts with nonprofit educational or research institutions for experimental, or research and development work, when several contracts or a series of contracts require financing by advance payments. When advance payments are appropriate, pooled advance payments may also be used to finance performance of other types of contracts held by a single contractor. They may be established without regard to the number of appropriations involved, and regardless of the fact that contracts affected may be those of more than one purchasing office, procuring activity, or Military Department. If more convenient or otherwise preferable, there also may be more than one advance payment pool agreement in force at the same time with a single contractor, designed separately to finance contracts of the Military Departments respectively concerned, or of one or more procuring activities respectively. Advance payment pool agreements may be established under either or both of the statutes mentioned in E-103.

E-415.1 *Distinction Between Pool Contracts and Designated Pool Contracts.* An advance payment pool agreement may cover a broad area of a contractor's financial needs rather than piecemeal segments related to separate contracts. A pool arrangement is based upon the contractor's financing requirements for a group of Government contracts to be performed at the same time. The monetary requirements for the group of contracts are considered in fixing the maximum dollar amount for the advance payment pool agreement. Advances are not made on each separate contract, but can be made on and charged against one or more large, long term contracts, so as to supply the monetary requirements for smaller contracts included in the advance payment pool. A contract to which the advance payments are charged is called a designated pool contract. All other contracts linked to the pool agreement are called the pool contracts.

E-416 Advance Payments Pool Agreements—Special Features. The principal features distinguishing an advance payment pool agreement from an advance payment provision affecting only a single contract are—

(i) The advance payment pool agreement specifies a "designated pool contract" or two or more "designated pool contracts," and provides for substitution from time to time of new or different contracts as the "designated pool contract(s);"

(ii) When there is only one designated pool contract, all advance payments are charged against that designated pool contract. When there is more than one designated pool contract, each advance payment made is charged against one of the designated pool contracts, except that when the foregoing is not possible, the advance must be allocated specifically by amounts to two or more designated pool contracts;

(iii) Liquidation of advance payments is geared to the stated contract price, or total estimated cost, if applicable, of the "designated pool contract(s);"

(iv) The advance payment pool agreement either lists other contracts as "pool contracts," or provides for inclusion of other contracts as "pool contracts" by reference to the advance payment pool agreement in such contracts, and provides for the subsequent inclusion of other contracts as "pool contracts;"

(v) All payments under all of the pool contracts, including designated pool contracts, are made into the advance payment Special Bank Account, except in those cases where the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1 and, in such cases, payments otherwise due the contractor under pool contracts are applied in liquidation of the outstanding advance payments; and

(vi) The appropriate provisions of the advance payment clause are made applicable to all pool contracts, including the designated pool contracts.

E-417 Liquidation—Designated Pool Contracts—Administering Office. It is imperative for each advance payment pool that effective arrangements be made to insure that there will not be overpayments, and that timely liquidation is accomplished against each designated pool contract. For each pool agreement, there must be a single administering office, and to the greatest extent possible there should be only one finance office or disbursing office for all of the contracts affected by the pool, especially those contracts which are designated pool contracts.

E-418 Pooled Advance Payments—Understandings. Pooled advance payments affecting contracts of more than one Military Department necessarily require agreement by those concerned with a given case. The following guidance is provided.

(a) There should be no single exclusive procedure for establishing an advance payment pool agreement. Requests for pooled advance payments may be initiated at the level of the contracting officer, or chief of a procuring activity, or at Departmental headquarters.

(b) When the advance payment pool is to affect contracts of more than one Department, the authorizing Department ordinarily would be the one having preponderant interest in the contractor's backlog of unfinished contracts, along the lines of E-306. Possible exceptions to the preponderance principle are cases in which it would be more convenient to use a relatively large long term contract of a nonpreponderant Department as the "designated pool contract," or where it is fairly expected that preponderance will shift during the term of the advance payment pool agreement.

(c) Inclusion of contracts of another Department in an advance payment pool arrangement, either as "pool contracts" or as a "designated pool contract," requires approval of the contract financing office of each Department concerned. This may be accomplished by concurrence in provisions of the pool agreement permitting inclusion of contracts of another Department, or by separate approvals in connection with the addition of such contracts to the advance payment pool.

(d) Situations may occur in which the remaining payments available on all pool contracts are not sufficient to liquidate outstanding advance payments. These circumstances will not affect the normal practice by which the net amount payable by or to the Government on each separate contract is determined by offsetting mutual debits and credits of the Government and the contractor respectively arising under each separate contract. For advance payments that remain outstanding after adjustment for debits and credits under each separate contract, amounts realized from the special pool bank account, from property covered by the advance payment lien, and from any other recoveries available for liquidation of advance payments should be applied first to liquidation of the remaining outstanding advance payments, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively. If there is only one open designated pool contract, the entire advance payment loss should fall on that contract. If there is more than one open designated pool contract on which advance payments remain outstanding after adjustment for debits and credits under each separate contract, the advance payment loss (insofar as contracts of two or more Military Departments are involved) will fall on all of those designated pool contracts, ratably in proportion to the amount of unliquidated advance payments outstanding on each contract respectively.

(e) Records will not be maintained to show separately the amount of advance payments invested in each one of the separate pool contracts. The keeping of such records is unnecessary, and would not be consistent with the purposes of pooled advance payments to provide necessary contract financing in such way as to minimize administrative effort and inconvenience of contractors and the Government.

E-419 Excluded Advance Payments. These regulations do not apply to advance payments for:

(i) extension or connection of public utilities for military installations, as authorized by Military Construction Authorization Acts;

(ii) authorized insurance premiums, including insurance of official motor vehicles in foreign countries, and expenses of investigations in foreign countries, as authorized by Section 603 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by other legislation authorizing payments for such expenses;

(iii) rentals, as authorized by Section 606 of the Department of Defense Appropriation Act, 1960 (73 Stat. 378) or by 31 U.S.C. 529i (69 Stat. 314) or by other legislation specifically authorizing advance payment of rent;

(iv) tuition, as authorized by 31 U.S.C. 529i (69 Stat. 314);

(v) subscriptions to publications, as authorized by 31 U.S.C. 530;

(vi) small purchases of goods or services in foreign countries, when the purchase price does not exceed $10,000 or equivalent amount of applicable foreign currency and advance payment of the purchase price or of a part thereof is required by and made in compliance with the laws or ministerial, i.e., governmental, regulations of the foreign country concerned, as authorized by 31 U.S.C. 529i (69 Stat. 314); or

(vii) advertising for military recruitment in high school and college publications not to exceed $300.00 under any single contract.

DEFENSE CONTRACT FINANCING REGULATIONS

Part 5—Progress Payments Based on Costs

E-500 Scope. This Part provides uniform policies, procedures, and forms for progress payments based on costs.

E-500.1 *References.* Paragraphs E-000, E-001, E-002, E-003, E-100, E-105, E-106, E-107, and all of Part 2 apply to all progress payments, whether based on costs or on a percentage or stage of completion.

E-500.2 *Exclusions.* This Part does not apply to (i) cost-reimbursement type contracts, except as to progress payments to subcontractors and suppliers thereunder (E-514), or (ii) contracts for construction (as defined in 10-101.6), or for shipbuilding or ship conversion, alteration or repair, when such contracts provide for progress payments based on a percentage or stage of completion.

E-500.3 *Contract Coverage.* Except as provided in E-500.2 above, this Part applies to all contracts (1-201.5) providing for progress payments. This Part applies to new procurement, to contract changes concerning progress payments, and to existing contracts whenever consistent therewith. However, a provision for unusual progress payments not specifically provided for in a contract at the time such contract was initially entered into and which may result in unliquidated unusual progress payments exceeding $25,000,000 shall not be inserted in a contract unless the Committees on Armed Services of the Senate and the House of Representatives have been notified in writing of such proposed payments and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees and neither House of Congress has adopted, within such 60-day period, a resolution disapproving such payments. For purposes of this Section, the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of such 60-day period. In addition, no agreement for payments, other than partial, progress, or other payments specifically provided for in contracts at the time such contracts were initially entered into, shall be entered into without the prior written coordination of the ODDR&E if the effect of such agreement, whether alone or in combination with other agreements between the Department of Defense and the contractor for such payments, would be to provide the contractor at any time with unliquidated balances of these payments in excess of $25,000,000.

E-501 Percentage or Stage of Completion. Progress payments based on a percentage or stage of completion will be confined to contracts for construction (10-101.6), shipbuilding and ship conversion, alteration or repair. For all other contracts, including any separate contracts for engines, machinery, equipment or other components for ships, the only types of progress payment provisions will be those based on costs, as authorized herein. However, on existing contracts which provide for progress payments based on a percentage or stage of completion, it is not required that provision for progress payments based on costs be substituted in connection with future amendments, supplements or modifications, if such substitution is found impracticable.

E-502 Obligations. Nothing in these regulations shall be construed to authorize payment of more than the amount obligated on a contract.

APPENDIX F

ILLUSTRATIONS OF STANDARD AND DEPARTMENT OF DEFENSE FORMS REFERENCED IN ASPR

F-000 Scope. This Appendix contains illustrations of Standard and Department of Defense forms referenced in this Regulation.

Part 1—Standard Forms

F-100 Scope of Part. Standard Forms referenced in this Regulation are illustrated in this Part in numerical order to provide a ready source of reference. The subparagraph numbers correspond with the Standard Form numbers—thus, Standard Form 18 appears as F-100.18.

STANDARD FORMS

F-100.18 *Standard Form 18 Request for Quotations*

REQUEST FOR QUOTATIONS
(THIS IS NOT AN ORDER)

Page | Of

1 REQUEST NO | 2 DATE ISSUED | 3 REQUISITION/PURCHASE REQUEST NO | 4 CERTIFIED FOR NATIONAL DEFENSE UNDER DMSA REG 2 AND/OR DMS REG 1 RATING

5 ISSUED BY | 6 DELIVER BY (Date)

7 DELIVERY
☐ FOB DESTINATION
☐ OTHER (See Schedule)

8 FOR INFORMATION CALL (Name and tel no) (No collect calls)

9 DESTINATION (Consignee and address including ZIP code)

6 TO NAME AND ADDRESS INCLUDING ZIP CODE

10 PLEASE FURNISH QUOTATIONS TO THE ISSUING OFFICE ON OR BEFORE CLOSE OF BUSINESS _____ (Date), SUPPLIES ARE OF DOMESTIC ORIGIN UNLESS OTHERWISE INDICATED BY QUOTER. THIS IS A REQUEST FOR INFORMATION, AND QUOTATIONS FURNISHED ARE NOT OFFERS. IF YOU ARE UNABLE TO QUOTE, PLEASE SO INDICATE ON THIS FORM AND RETURN IT. THIS REQUEST DOES NOT COMMIT THE GOVERNMENT TO PAY ANY COSTS INCURRED IN THE PREPARATION OR THE SUBMISSION OF THIS QUOTATION, OR TO PROCURE OR CONTRACT FOR SUPPLIES OR SERVICES.

SCHEDULE

11 ITEM NO	12 SUPPLIES/SERVICES	13 QUANTITY	14 UNIT	15 UNIT PRICE	16 AMOUNT

TABLE OF CONTENTS

(X)	SEC		PAGE	(X)	SEC		PAGE
		PART I THE SCHEDULE				PART II GENERAL PROVISIONS	
	A	Contract Form			I	General Provisions	
	B	Supplies/Services & Prices				PART III LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS	
	C	Description/Specification			J	List of Documents, Exhibits and Other Attachments	
	D	Packaging and Marking				PART IV GENERAL INSTRUCTIONS	
	E	Inspection and Acceptance			K	Representations, Certifications and Other Statements of Offerors	
	F	Delivery or Performance			L	Instructions and Conditions and Notices to Offerors	
	G	Contract Administration Data			M	Evaluation Factors for Award	
	H	Special Provisions					

17 PRICES QUOTED INCLUDE APPLICABLE FEDERAL, STATE AND LOCAL TAXES

DISCOUNT FOR PROMPT PAYMENT _____ % 10 CALENDAR DAYS _____ % 20 CALENDAR DAYS _____ % 30 CALENDAR DAYS _____ % _____ CALENDAR DAYS

NOTE: Reverse must also be completed by the quoter.

18 NAME AND ADDRESS OF QUOTER (street, city, county, state and ZIP Code) | 19 SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION | 20 DATE OF QUOTATION

21 SIGNER'S NAME AND TITLE (Type or print) | 22 TELEPHONE NO

18-113 | Exception approved by NARS, 4/20/80 | STANDARD FORM 18 (Rev 2-77)

STANDARD FORMS

F-100.18 *Standard Form 18: Request for Quotations—Continued*

REPRESENTATIONS AND CERTIFICATIONS

The Quoter represents and certifies as part of his quotation that: (Check or complete all applicable boxes or blocks.)

1. SMALL BUSINESS

He ☐ is, ☐ is not, a small business concern. A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.) If the quoter is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished hereunder ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

2. MINORITY BUSINESS ENTERPRISE

He ☐ is, ☐ is not, a minority business enterprise. A minority business enterprise is defined as a "business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members." For the purpose of this definition, minority group members are Negroes, Spanish-speaking American persons, American-Orientals, American-Indians, American-Eskimos, and American-Aleuts.

3. REGULAR DEALER-MANUFACTURER (Applicable only to supply contracts exceeding $10,000.)

He is a ☐ regular dealer in, ☐ manufacturer of, the supplies offered.

4. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (Applicable only to quotations in excess of $10,000.)

(a) By submission of this quotation, the quoter certifies, and in the case of a joint quotation, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this quotation have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other quoter or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this quotation have not been knowingly disclosed by the quoter and will not knowingly be disclosed by the quoter prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other quoter or to any competitor; and

(3) No attempt has been made or will be made by the quoter to induce any other person or firm to submit or not to submit a quotation for the purpose of restricting competition.

(b) Each person signing this quotation certifies that:

(1) He is the person in the quoter's organization responsible within that organization for the decision as to the prices being quoted herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2)(i) He is not the person in the quoter's organization responsible within that organization for the decision as to the prices being quoted herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above

(c) This certification is not applicable to a foreign quoter submitting a quotation for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A quotation will not be considered for award where (a)(1), (a)(3), or (b) above, has been deleted or modified. Where (a)(2) above, has been deleted or modified, the quotation will not be considered for award unless the quoter furnishes with his quotation a signed statement which sets forth in detail the circumstances of the disclosure and the head of the Agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

STANDARD FORM 18 BACK (Rev 2-77)

F-100.19 *Standard Form 19: Invitation, Bid, and Award (Construction, Alteration or Repair).* (See 16-401.1(i)).

STANDARD FORM 19
(Construction, Alteration or Repair)

INVITATION, BID, AND AWARD

REFERENCE (Include on correspondence)

CHECK IF SMALL BUSINESS SET-ASIDE OR OTHER NEGOTIATED PROCUREMENT (If no bid, Bid includes Proposal)

INVITATION FOR BIDS

ISSUING OFFICE

DATE ISSUED

BID RECEIVING OFFICE

Information regarding bidding material may be obtained from the issuing office

SEALED BIDS in covering work described on specifications, schedules, drawings and conditions attached and dated as follows:

will be received in the Bid Receiving Office until (Hour) local time at place of bid opening (Date) and at that time publicly opened

Sealed envelopes containing bids shall be addressed to the Bid Receiving Office and shall be marked to show Bidder's Name and Address, * Reference Time and Date of Opening

BID (To be completed in Ink)

DATE BID SUBMITTED

The undersigned agrees, if this bid is accepted within calendar days (60 days unless a different period is inserted) after date of opening, to complete all work specified in strict accordance with the above-cited documents and the General Provisions on the reverse hereof, within calendar days after receipt of notice to proceed, for the following amount:

including all applicable Federal, State and local taxes. The undersigned further agrees, if any monthly award resulting from this bid exceeds $2,000, TO COMPLY with the provisions of Standard Form 19-A, Labor Standards Provisions Applicable to Contracts in Excess of $2,000 and TO FURNISH a performance bond in an amount equal to 100 percent and a payment bond in an amount equal to 50 percent of the contract price with sureties acceptable to the Government on Government forms within days after forms are furnished.

The representations and certifications on the accompanying STANDARD FORM 19-B are made a part of this bid

NAME AND ADDRESS OF BIDDER (Street, City, State) (Type or print)

SIGNATURE OF PERSON AUTHORIZED TO SIGN THIS BID

SIGNER'S NAME AND TITLE (Type or print)

AREA CODE & PHONE NO.

AWARD (To be filled in by Government)

DATE OF AWARD

THE ABOVE BID IS ACCEPTED IN THE AMOUNT OF $

☐ YOU ARE DIRECTED TO PROCEED WITH THE WORK UPON RECEIPT OF THIS AWARD

☐ NOTICE TO PROCEED WILL BE ISSUED UPON RECEIPT OF ACCEPTABLE PAYMENT AND PERFORMANCE BONDS.

THE UNITED STATES OF AMERICA

BY (Contracting Officer)

(Title)

*Include ZIP CODE in all mailing addresses

STANDARD FORMS

F-100.25-B *Standard Form 25-B: Continuation Sheet (For Standard Forms 24, 25 and 25-A)*—Continued

CORPORATE SURETY(IES)

SURETY P	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY Q	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY R	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY S	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY T	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY U	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY V	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY W	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY X	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		

* U.S. GOVERNMENT PRINTING OFFICE: 1976 OF—705-204—50 0

F-100.26 *Standard Form 26: Award/Contract*

STANDARD FORM 26, JULY 1966
GENERAL SERVICES ADMINISTRATION
FED PROC REG (41CFR) 1-16.101

Exception approved by NARS, 6/20/80

AWARD/CONTRACT

PAGE 1 OF

1. CONTRACT (Proc. Inst. Ident.) NO
2. EFFECTIVE DATE
3. REQUISITION/PURCHASE REQUEST/PROJECT NO
4. CERTIFIED FOR NATIONAL DEFENSE UNDER BDSA REG. 2 AND/OR DMS REG. 1. RATING
5. ISSUED BY CODE
6. ADMINISTERED BY (If other than block 5) CODE
7. DELIVERY ☐ FOB DESTINATION ☐ OTHER (See below)
8. CONTRACTOR NAME AND ADDRESS CODE FACILITY CODE (Street, city, county, State, and ZIP code)
9. DISCOUNT FOR PROMPT PAYMENT
10. SUBMIT INVOICES (6 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK
11. SHIP TO/MARK FOR CODE
12. PAYMENT WILL BE MADE BY CODE
13. THIS PROCUREMENT WAS ☐ ADVERTISED, ☐ NEGOTIATED, PURSUANT TO ☐ 10 U.S.C. 2304 (a)( ) ☐ 41 U.S.C. 252 (c)( )
14. ACCOUNTING AND APPROPRIATION DATA

15 ITEM NO	16 SUPPLIES/SERVICES	17 QUANTITY	18 UNIT	19 UNIT PRICE	20 AMOUNT

TABLE OF CONTENTS

(X)	SEC		PAGE	(X)	SEC		PAGE
		PART I - THE SCHEDULE				PART II - GENERAL PROVISIONS	
	A	Contract Form			I	General Provisions	
	B	Supplies/Services & Prices				PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACHMENTS	
	C	Description/Specification			J	List of Documents, Exhibits and Other Attachments	
	D	Packaging and Marking				PART IV - GENERAL INSTRUCTIONS	
	E	Inspection and Acceptance			K	Representations, Certifications and other Statements of Offeror	
	F	Deliveries or Performance			L	Instructions and Conditions and Notices to Offerors	
	G	Contract Administration Data			M	Evaluation Factors for Award	
	H	Special Provisions					

21. TOTAL AMOUNT OF CONTRACT $

CONTRACTING OFFICER WILL COMPLETE BLOCK 22 OR 26 AS APPLICABLE

22. ☐ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

23. NAME OF CONTRACTOR
BY _____ (Signature of person authorized to sign)

24. NAME AND TITLE OF SIGNER (Type or print)
25. DATE SIGNED

26. ☐ AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number _____, including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

27. UNITED STATES OF AMERICA
BY _____ (Signature of Contracting Officer)

28. NAME OF CONTRACTING OFFICER (Type or print)
29. DATE SIGNED

F-100.149 Reserved.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36593

STANDARD FORMS

F-100.252 *Standard Form 252: Architect-Engineer Fixed-Price Contract.*

(Standard Form 252) (Approved by GSA) (Revised 1-1-76) (Pres. Circ. A-102) (Pub. L. 91-379, 84 Stat. 796)	ARCHITECT-ENGINEER FIXED-PRICE CONTRACT	1. CONTRACT NO.
		2. DATE OF CONTRACT

1. NAME AND ADDRESS OF ARCHITECT-ENGINEER*

2. DESCRIPTION OF PROJECT AND NUMBER*

3. PROJECT SITE AND LOCATION

4. CONTRACT FEE (Lump sum or method of arriving at fee to be paid)

7. SUBMITTAL SCHEDULE (Express in days and dates)

8. SUPERVISING ARCHITECT

9. ADMINISTRATIVE, APPROPRIATION, AND ACCOUNTING DATA

*Include ZIP code, Area code, and Telephone Number

F-100.252

ARMED SERVICES PROCUREMENT REGULATION

DEPARTMENT OF DEFENSE FORMS

F-200.254 *DD Form 254: Contract Security Classification Specification*

DEPARTMENT OF DEFENSE CONTRACT SECURITY CLASSIFICATION SPECIFICATION	1. THE REQUIREMENTS OF THE DOD INDUSTRIAL SECURITY MANUAL APPLY TO ALL SECURITY ASPECTS OF THIS EFFORT. THE FACILITY CLEARANCE REQUIRED IS _____

2. THIS SPECIFICATION IS FOR:	3. CONTRACT NUMBER OR OTHER IDENTIFICATION NUMBER (Prime contracts must be shown for all subcontracts)	4. DATE TO BE COMPLETED (Estimate)	5. THIS SPECIFICATION IS (See "NOTE" below. If item b or c is "X", also enter date for item a)	
a. PRIME CONTRACT	a. PRIME CONTRACT NUMBER	a.	a. ORIGINAL (Complete date on all cases)	DATE
b. SUBCONTRACT (Use item 13 for subcontracting beyond second tier)	b. FIRST TIER SUBCONTRACT NO.	b.	b. REVISED (Supersedes all previous specifications) REVISION NO.	DATE
c. REQUEST FOR DD REQUEST FOR PROPOSAL OR REQ FOR QUOTATION	c. IDENTIFICATION NUMBER	c. DUE DATE	c. FINAL	DATE

6. Is this a follow-on contract? ☐ Yes ☐ No. If YES, complete the following:
a. _____ b. _____ c. Accountability for classified material on preceding contract
PRECEDING CONTRACT NUMBER DATE COMPLETED
(c) If not, transferred to this follow-on contract.

7a. Name, Address & Zip Code of Prime Contractor *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office
8a. Name, Address & Zip Code of First Tier Subcontractor *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office
9a. Name, Address & Zip Code of Second Tier Subcontractor, or facility associated with IFB, RFP OR RFQ *	b. FSC Number	c. Name, Address & Zip Code of Cognizant Security Office

* When actual performance is at a location other than that specified identify such other location in Item 13

10a. General identification of the Procurement for which this specification applies | b. DODAAD Number of Procuring Activity identified in Item 16a

c. Are there additional security requirements established in accordance with paragraph 1-114 or 1-115, ISM? ☐ Yes ☐ No. If YES, identify the pertinent contractual documents in Item 14

d. Are any elements of this contract outside the inspection responsibility of the cognizant security office? ☐ Yes ☐ No. If YES, explain in Item 13 and identify specific areas or elements

11. ACCESS REQUIREMENTS	YES	NO	ACCESS REQUIREMENTS (Continued)	YES	NO
a. Access to Classified Information Only at other contractor/Government activities			j. Access to SENSITIVE COMPARTMENTED INFORMATION		
b. Receipt of classified documents or other material for reference only (no generation)			k. Access to other Special Access Program information (Specify in Item 13).		
c. Receipt and generation of classified documents or other material.			l. Access to U. S. classified information outside the U. S. Panama Canal Zone Puerto Rico, U. S. Possessions and Trust Territories		
d. Fabrication/Modification/Storage of classified hardware			m. Defense Documentation Center or Defense Information Analysis Center Services may be requested.		
e. Graphic arts services only.			n. Classified ADP processing will be involved.		
f. Access to IPO information.			o. REMARKS:		
g. Access to RESTRICTED DATA					
h. Access to classified COMSEC information.					
i. Cryptographic Access Authorization required.					

12. Refer all questions pertaining to contract security classification specifications to the official named below (NORMALLY, the ACO (Item 16a)) EMERGENCY, direct with reason record of inquiry and reasons to ACO) (this gives contractor for subcontracts).

a. The classification guidance contained in this specification and attachments referenced herein is complete and adequate

b. Typed name, title and signature of program/project manager or other designated official	c. Activity name, address, Zip Code, telephone number and office symbol

NOTE: Original Specification (Item 5a) is authority for contractors to mark classified information. Revised and Final Specifications (Items 5b and c) are authority for contractors to remark the regraded classified information. Such actions by contractors shall be taken in accordance with the provisions of the Industrial Security Manual

DD FORM 1 JAN 75 254 EDITION OF 1 APR 71 IS OBSOLETE. ALSO REPLACES DD FORM 254c WHICH IS OBSOLETE

F-200.254

ARMED SERVICES PROCUREMENT REGULATION

DEPARTMENT OF DEFENSE FORMS

F-200.254 *DD Form 254: Contract Security Classification Specification*—Continued

12c. Information pertaining to classified contracts or projects, even though such information is considered unclassified, shall not be released for public dissemination except as provided by the Industrial Security Manual (paragraph 5a and Appendix IX).

d. Proposed public releases shall be submitted for approval prior to release [Direct ; Through (Specify)]:

to the Directorate for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs) * for review in accordance with paragraph 5a of the Industrial Security Manual.

* In the case of non-DoD User Agencies, see footnote, paragraph 5a, Industrial Security Manual.

10. Security Classification Specifications for the subcontracts identified below (**"X" applicable box(es) and supply attachments as required**). Any narrative or classification guide(s) furnished shall be annotated or have information appended to clearly and precisely identify each element of information which requires a classification. When a classification guide is utilized, that portion of the guide(s) pertaining to the specific contractual effort may be extracted and furnished the contractor. When a total guide(s) is utilized, each individual portion of the guide(s) which pertains to the contractual effort shall be clearly identified in Item 14b. The following information must be provided for each item of classified information identified in any extract or guide:
(i) Category of classification. (ii) Date or event for declassification or review for declassification, and (iii) The date or event for downgrading (if applicable).
The official named in Item 17b is responsible for furnishing the contractor copies of all guides and changes thereto that are made a part of this specification. Classified information may be attached or furnished under separate cover.

☐ a. A completed narrative is (1) ☐ attached, or (2) ☐ transmitted under separate cover.
☐ b. The following classification guide(s) is made a part of this specification and is (1) ☐ attached, or (2) ☐ transmitted under separate cover. (List guides under Item 13 or be an attachment by title, reference number and date).

☐ c. Service-type contract/sub contract (Specify instructions in accordance with 32 CFR 154, as appropriate.).
☐ d. "X" only if this is a final specification and Item 6 is a "NO" answer. In response to the contractor's request dated _____ retention of the identified classified material is authorized for a period of _____
☐ e. Annual review of this DD Form 254 is required. If "X" "d", provide date such review is due: _____

13. Remarks (Whenever possible, illustrate proper classification, declassification, and if applicable, downgrading instructions).

16a. Contract Security Classification Specifications for Subcontracts issuing from this contract will be approved by the Office named in Item 16b below, or by the prime contractor, as authorized. This Contract Security Classification Specification and attachments referenced herein are approved by the User Agency Contracting Officer or his Representative named in Item 16b below.

b. Typed name and title of approving official

c. Signature

d. Approving official's activity address and Zip Code

e. Name, address and Zip Code of Administrative Contracting Office

REQUIRED DISTRIBUTION
☐ Prime Contractor (Item 7a)
☐ Cognizant Security Office (Item 7c)
☐ Administrative Contracting Office (Item 16e)
☐ Quality Assurance Representative
☐ Subcontractor (Item 8a)
☐ Cognizant Security Office (Item 8c)
☐ Program/Project Manager (Item 12b)
☐ U. S. Activity Responsible for Overseas Security Administration

ADDITIONAL DISTRIBUTION
☐
☐

[The next page is F87]

DEPARTMENT OF DEFENSE FORMS

F-200.350 *DD Form 350: Individual Procurement Action Report*

INDIVIDUAL PROCUREMENT ACTION REPORT

1A. REPORT NO (Current) 1B. (Reserved) 1C. REPORT NO (Previous)
2. CONTRACT NO (1) Activity (2) FY (3) Serial No
A. Defense
B. Other
Item 3 Code — 3. CORRECTION OF PRIOR DD FORM 350 Serial No
1 Correction only
2 Reversing entry
4. MOD NO AND OTHER IDENT
Item 5 Code — 5. PURCHASING OFFICE
Item 8A Code — 8A. SMALL DISADVANTAGED BUSINESS CONCERN
A. Yes B. No known source C. Not Solicited D. Solicited but did not bid E. Bid was not low F. Bid not accepted for other reasons
KNOWN SOURCE BUY
Item 8A Code DUNS No
Item 6 Code — 6. CONTRACTOR IDENTIFICATION
Company Name
Division Name (if any)
Number and Street
City and State or Country
Item 7 Code City State 7. PRINCIPAL PLACE OF PERFORMANCE (City and State or Country) 7A. (Reserved) 7B. (Reserved)
Item 7C Code — 7C. MULTI-YEAR PROCUREMENT
A. Multi-year procurement B. (Reserved Do not use) C. Not a multi-year procurement
Item 8 Code — 8. SUBJECT TO STATUTORY REQUIREMENTS
A. Walsh-Healey Act, Manufacturer B. Walsh-Healey Act, Regular Dealer C. Service Contract Act D. Not subject to Walsh-Healy, Service Contract or Davis Bacon Act E. Davis-Bacon Act
Item 9 Code — 9. LABOR SURPLUS AREA PREFERENCE
1 (Reserved Do not use) 2 Not a Labor Surplus Area Preference Award
3 Partial Labor Surplus Area Set-Aside Preference 4 Combined Small Business/Partial Labor Surplus Area Set-Aside Preference
5 Labor Surplus Area-Tie-Bid Preference 6 (Reserved Do not use) 7 Total Labor Surplus Small Business Set-Aside Preference 8 Total Labor Surplus Area Set-Aside Preference
9A. On File AFFIRMATIVE ACTION PLAN 1 Yes 2 No 3. Yes 2. No 4. Exempt
9B. On Previously Held Contracts 1 Yes 2 No 3 Exempt
9C. Woman Owned Business 1 Yes 2 No 3 Not Certified
9D. Consultant Type Services 1 Yes 2 No
10A. PSC OR SV CODE 10B. SYSTEM OR EQUIPMENT CODE 10C. DD CLAIMANT PROG NO 11. DESCRIPTION OF COMMODITY OR SERVICE
Item 12 Code — 12. COORDINATED PROCUREMENT
1 Procurement Agreement 2 Other Federal Agencies 3 GSA Supply Schedule 4 Small Business Admin (8A) 5 Single Department Procurement 6 Defense Logistics Agency 7 (Reserved) 8 Other
Item 13 Code — 13. SYNOPSIS OF PROCUREMENT
A. Synopsized 5 Not Synopsized Original Estimate under $10,000 Not Synopsized per Exception 1 2 3 4 6 7 8 9
Modification
Item 14 Code — 14. KIND OF PROCUREMENT ACTION
1 Initial Letter Contract 2 Definitive Contract superseding Letter Contract 3 Definitive Contract (including Letter of Award) 4 Order under Contract 5 (Reserved Do not use) 6 Additional Work 7 Funding action 8 Change Order 9 Termination or cancellation
Item 15 Code — 15. CONTRACT PLACEMENT
1 Intergovernmental (Do not fill in items 16 thru 22) 2 Two-step formal advertising (Do not fill in items 17 thru 19A) 3 Other formal advertising (Do not fill in items 17 thru 19A) 4 Small Business restricted advertising (Fill in all items) 5 Other Negotiated (Fill in all items) 6 Other Total Small Business Set Aside (Fill in all items) J Foreign Military Sales (Do not fill in items 16 thru 22)
Item 16 Code — 16. TYPE OF BUSINESS CONCERN
Awarded to Large Business
Awarded to Small Business
A Not solicited B Solicited but did not bid C Bid was not low D Bid not accepted for other reasons
J Awarded to Small Business L Awarded for work outside U.S. and possessions
Awarded to Nonprofit Institutions M Nonprofit Educational N Nonprofit Hospital P Nonprofit-Other
R Awarded to Overseas Firm for work in U.S.
Item 17 Code — 17. NEGOTIATED UNDER 10 USC 2304(a) EXCEPTION
For 10 USC 2304(a)(1), Citation
1A Labor Surplus Area or industry wide 1B Business Small Business set-aside 1C Domestic Area set-aside 1E Balance of Payments Program
Negotiation accomplished pursuant to 10 USC 2304(a)(2) Citation
2 3 4 5 6 7 8 9 11 12 13 14 15 16
For 10 USC 2304(a)(10), Citation
10-1 10-2 10-3 10-4 10-5 10-6 10-7 10-8 10-9 10-10 10-11 10-12 10-13 10-14 10-15 10-16 10-17 10-26
Otherwise authorized by law 17A Joint Small Business set-aside 17B Other Agency
Item 18 Code — 18. EXTENT OF COMPETITION IN NEGOTIATION
Competitive
1 Full competition 2 Design with
3 Follow on after prior comp 4 Follow on after design (incl other comp) 5 Other non-competitive 6 Catalog or market price
7 Not Applicable 8 Multiple sources
Item 19 Code — 19. CERTIFIED COST OR PRICING DATA (This data is submitted)
A Required B Not Required
Item 19A Code — 19A. COST ACCOUNTING STANDARDS CLAUSE
1 Includes or is subject to clause 2 Does not include or is not subject to clause
Item 20 Code — 20. TYPE OF CONTRACT
Fixed Price Redetermination
A Type 1 B Type 2
Fixed Price
Fixed Price Incentive
Cost Plus Fixed Fee
Cost Plus Incentive Fee
Cost Plus Award Fee
Time and Materials
Labor Hour
Item 21 Code — 21. SUBCONTRACTING PROGRAM PLAN CLAUSE
1 Nonclause was incorporated 2 Nonclause was not incorporated 3 Both negotiated and incentive goals
Item 22 TRADE DATA
A No of bidders offered foreign and items B Percent of Foreign content 1 Buy American Act Percent Differential
Item 23 — 23. DUTY FREE ENTRY ENTITLED 1 Yes 2 No
24. DATE OF THIS ACTION A Year Month Day
25. ESTIMATED COMPLETION DATE Year Month
26. TOTAL OF THIS ACTION (Round to nearest whole dollar)
27. (Reserved)
28. TYPED NAME AND SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE
29. SIGNATURE
30. DATE SUBMITTED

DD FORM 1 OCT 1 350 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE

1 JULY 1976

DEPARTMENT OF DEFENSE FORMS

F-200.882 *DD Form 882: Report of Inventions and Subcontracts (Pursuant to "Patent Rights" Contract Clause)*—Continued

F195

INSTRUCTIONS TO CONTRACTOR

This form *(in triplicate)* is for use in submitting INTERIM and FINAL reports to the contracting officer.

An INTERIM report is due at least every 12 months from the date of the contract and shall include (a) a listing of Subject Inventions during the reporting period, (b) a certification of compliance with required invention identification and disclosure procedures, and (c) any requested information on Subcontracts having a Patent Rights clause awarded during the reporting period which has not been previously reported.

A FINAL report is due within 3 months after completion of the contract work and shall include (a) a listing of all Subject Inventions required by the contract to be reported, and (b) any required information on Subcontracts awarded having a Patent Rights clause which has not been previously reported.

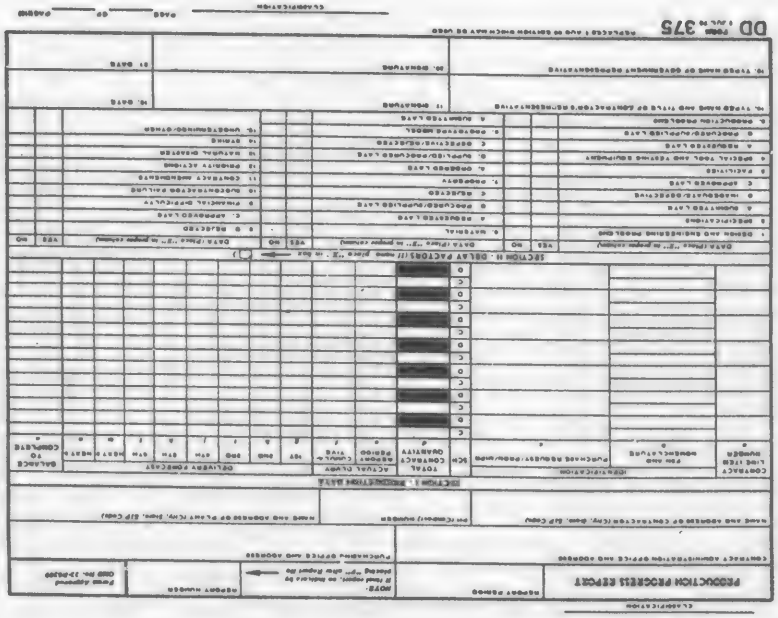
Reverse side of DD Form 882, 1 OCT 75

F-200.882 ARMED SERVICES PROCUREMENT REGULATION

1 JULY 1976

DEPARTMENT OF DEFENSE FORMS

F-200.375 *DD Form 375: Production Progress Report*



F-200.375 ARMED SERVICES PROCUREMENT REGULATION

F196 DAC #76-26 15 DECEMBER 1980

DEPARTMENT OF DEFENSE FORMS

F-200.1057 *DD Form 1057: Monthly Procurement Summary of Actions $10,000 or Less*

MONTHLY PROCUREMENT SUMMARY OF ACTIONS $10,000 OR LESS

REPORT CONTROL SYMBOL DD-M(L)(M) 1016

MONTH ENDING

PURCHASING OFFICE AND MAILING ADDRESS

REPORTING OFFICE CODE

CATEGORY	NUMBER OF ACTIONS	DOLLAR VALUE
SECTION A - ALL PROCUREMENT ACTIONS		
1. WITH LARGE BUSINESS FIRMS TOTAL		
a. ADVERTISED		
b. NEGOTIATED		
2. WITH SMALL BUSINESS FIRMS TOTAL		
a. ADVERTISED		
b. NEGOTIATED		
3. WITH EDUCATIONAL AND NON-PROFIT INSTITUTIONS TOTAL		
a. ADVERTISED		
b. NEGOTIATED		
4. FOR WORK OUTSIDE THE U.S. TOTAL		
a. ADVERTISED		
b. NEGOTIATED		
5. INTRA GOVERNMENTAL TOTAL		
a. GSA Federal Supply Schedules		
b. Other Federal Agencies		
6. FOREIGN MILITARY SALES TOTAL		
7. TOTAL (Lines 1+2+3+4+5+6)		

CATEGORY	NUMBER OF ACTIONS	DOLLAR VALUE
SECTION B - NEGOTIATION AUTHORITY 10 U.S.C.		
1. SECTION 2304(a)(1)		
a. Labor Surplus Area or Industry Set-Aside		
b. Small Business Set Aside (Unilateral)		
c. Disaster Area Set-Aside		
d. Balance of Payments Program		
2. SECTION 2304(a)(2)		
3. SECTION 2304(a)(3)		
a. RESERVED FOR SMALL BUSINESS		
b. NOT RESERVED FOR SMALL BUSINESS		
4. SECTION 2304(a)(4)		
5. SECTION 2304(a)(5)		
6. SECTION 2304(a)(6)		
7. SECTION 2304(a)(7)		
8. SECTION 2304(a)(8)		
9. SECTION 2304(a)(9)		
10. SECTION 2304(a)(10)		
11. SECTION 2304(a)(11)		
12. SECTION 2304(a)(12)		
13. SECTION 2304(a)(13)		
14. SECTION 2304(a)(14)		
15. SECTION 2304(a)(15)		
16. SECTION 2304(a)(16)		
17. SECTION 2304(a)(17)		
a. Small Business Set-Aside (Joint)		
b. Other		
18. TOTAL (Lines 1 thru 17)		

CATEGORY	NUMBER OF ACTIONS	DOLLAR VALUE
SECTION C - RESEARCH, DEVELOPMENT, TEST AND EVALUATION ACTIONS		
1. LARGE BUSINESS FIRMS		
2. SMALL BUSINESS FIRMS		
3. EDUCATIONAL AND NON-PROFIT INSTITUTIONS		
4. TOTAL (Lines 1+2+3)		
SECTION D - COMPETITION IN NEGOTIATED ACTIONS		
1. PRICE COMPETITION		
2. OTHER NEGOTIATED		
3. NOT CONSIDERED FOR COMPETITION		
4. TOTAL (Lines 1+2+3)		
SECTION E - SMALL DISADVANTAGED BUSINESS ACTIONS		
1. THROUGH SBA 8(A)		
2. DIRECT		
3. TOTAL (Lines 1+2)		
SECTION F - WOMEN OWNED BUSINESS		
1. SMALL BUSINESS		
2. LARGE BUSINESS		
3. TOTAL (Lines 1+2)		

REMARKS (Continue on separate sheet)

TELEPHONE NUMBER

DATE SUBMITTED

TYPED NAME AND SIGNATURE

DD FORM 80 OCT 1 1057

EDITION OF 1 OCT 77 IS OBSOLETE

F-200.1057

ARMED SERVICES PROCUREMENT REGULATION

[FR Doc. 81-20581 Filed 7-13-81; 8:45 am]

BILLING CODE 3810-70-C

32 CFR Parts 1 through 39

[DAC 76-27]

Defense Acquisition Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document publishes changes to the Defense Acquisition Regulation contained in the Code of Federal Regulations. The changes are the same as those in Defense Acquisition Circular 76-27. Some of the changes include: termination of the Wage and Price Regulatory Program; debarment and suspension of subcontractors; automatic data processing contracting; fast payment procedures; rights in commercial computer software; liability for shipping loss or damage; allowance of costs for long-term leases; shipment or storage of personal property; Department of Defense precious metals program; and deferment proposals. In addition to these changes, there is included material concerning the Simplified Research Contract Procedures.

EFFECTIVE DATE: May 15, 1981.

FOR FURTHER INFORMATION CONTACT: J. Brannan, Director, Defense Acquisition Regulatory Council, Room 3D1028, Pentagon, Washington, D.C. 20301, Telephone 202-697-7266.

SUPPLEMENTARY INFORMATION:

Background

The Defense Acquisition Regulation (DAR) is codified in Title 32, Parts 1-39, Volumes I, II, and III, of the Code of Federal Regulations.

The July 1, 1979 revision, as supplemented on July 1, 1980, is the most recent edition of that title. It reflects amendments to the 1976 edition made by Circulars 76-1 through 76-23.

The Department of Defense announced the promulgation of the 1979 CFR edition in the **Federal Register** of December 31, 1979 (44 FR 77158), and also announced at that time that subsequent amendments to the Regulation would be published in the **Federal Register.**

Defense Acquisition Circular 76-27.

This document contains amendments to the Defense Acquisition Regulation in the form of replacement pages which were included in DAC 76-27, issued May 15, 1981. The following is a summary of the amendments:

Termination of the Wage and Price Regulatory Program. In conformance with Executive Order 12288, dated January 29, 1981, which terminated the Wage and Price Regulatory Program, DAR 1-341, which implemented the program, is canceled. The clauses at 7-2003.83 and 7-104.101, concerning compliance with the program, and related paragraphs in DAR Section VII are deleted. In addition to these changes, the most recent list of noncompliant contractors has been rescinded.

Debarment and Suspension of Subcontractors. DAR Section I, Part 6 is revised to confirm and clarify the Department of Defense policy that debarment and suspension procedures apply to subcontractors.

Automatic Data Processing (ADP) Contracting. Part 11 is added to Section IV of the DAR to provide comprehensive guidance to DoD personnel with respect to contracting procedures for ADP equipment, software, maintenance services, and support services. The coverage incorporates in one document existing guidance contained in the Federal Property Management Regulations, the Federal Procurement Regulations, Department of Defense Directives and Instructions, and related Departmental implementation. Associated changes are made in other sections of the DAR as appropriate. NOTE: Two new General Services Administration Regulations regarding the acquisition of ADPE became effective January 15, 1981. They are published in the **Federal Register,** Volume 46, No. 2, January 5, 1981. (46 FR 1196 and 46 FR 1213).

Fast Payment Procedures. The coverage in DAR 3-606 and the related changes in 7-104.84 are revised to incorporate provisions for overseas shipments and to clarify the information to be submitted by contractors with invoices and DD Form 250.

Rights in Commercial Computer Software. DAR Section IX and the related clauses in 7-104.9 are revised to authorize the use of a special Restricted Rights Legend for commercial computer software. Related changes are included in the coverage concerning Government use of such software.

Liability for Shipping Loss or Damage. Paragraph (c) of the clause at DAR 7-1601.14 is revised with regard to the liability for loss of or damage to military goods during shipment.

Allowance of Cost for Long-Term Leases. DAR 15-205.9 and 15-205.34 are revised to reinstate the "grandfather" clause, similar to the one which appeared in the DAR (ASPR) from December 31, 1969 (Revision 6) to September 1, 1978 (DAC 76-17), for application to leases as originally provided in ASPR Revision 6. It should be noted that when lease costs are allowed under the grandfather provision the asset values may not be included in computation of facilities capital cost of money.

Shipment or Storage of Personal Property. DAR 22-602.1 is revised to authorize substitution of "MTMC Pamphlet 5512, dated October 12, 1978," for "Federal Specification PPP-B-580" for shipping containers.

DoD Precious Metals Program. DAR 24-204.4 is revised to recognize the Defense Property Disposal Precious Metals Recovery Office in Colts Neck, New Jersey, as the single DoD control point for precious metal reporting. The coverage also is revised to provide for the disposition of all precious metals, not just silver and gold material, when it is determined that recovery is not feasible.

Deferment Proposals. Appendix E (E-614) is revised to incorporate language to clarify existing policy relative to deferment proposals and to be consistent with E-623 which sets forth the responsibility of the contract financing office for acting on such proposals.

Editorial Changes. Editorial changes are included in this DAC to correct typographical errors or administrative oversight, and to provide other editorial corrections.

Test of the Short Form Research Contract. The Defense Acquisition Regulatory (DAR) Council, on January 17, 1980, approved a two-year test of a Short Form Research Contract (SFRC) for awards to educational institutions and nonprofit organizations whose primary purpose is the conduct of scientific research, when the basis of award is an unsolicited proposal. DD Form 2222 (Test), 1 Jan 80; the Simplified Research Contract Procedures (DAR Section IV, Part 10); and the SFRC Contract Clauses (DAR Section VII, Part 22), established for the purpose of the test are included as part of this DAC, but not in the form of replacement pages in the Regulation.

Neither the SFRC nor the accompanying contract procedures are intended to provide new policy coverage or guidance on the use of research contracts versus grants for educational institutions and/or nonprofit organizations. The SFRC test coverage does, however, present a significant departure from current DoD research contracting procedures by providing for:

Unilateral awards when unsolicited proposals receive favorable technical evaluation;

Use of a one-page contract document through incorporation by reference of the proposal and general provisions;

Consolidation of all applicable contract clauses and provisions for educational institutions and other qualifying nonprofit organizations into the newly established test, DAR Section VII, Part 22.

It is believed that use of the SFRC will enhance the use of unsolicited proposals and provide a more consistent approach and format for DoD research contracting with educational institutions and other nonprofit organizations. For this reason, use of the SFRC by all DoD contracting activities is mandatory for applicable contracts during the two-year test period. A special instrument identification code (DAR 20–203.1(iii)) for SFRCs has been assigned as follows: "K Short Form Research Contract." Use of the Basic Agreements with educational institutions and nonprofit organizations, as prescribed by DAR 4–118.5, is suspended during the test period. The SFRC is also exempt from the Uniform Contract Format prescribed by DAR 3–501.

At the end of the first year of the test, all DoD contracting activities will be requested to report on implementation of the SFRC. Any necessary changes or adjustments to the SFRC format, procedures or contract provisions will be made at that time.

DD Form 2222 (Test), 1 Jan 80, may be reproduced for local use pending receipt of the form through normal form distribution channels.

Because the Defense Acquisition Regulation concerns agency management, public property, and contracts, it is not necessary to issue proposed rules for public comment. Neither is it necessary to delay the effective date until 30 days after the date of publication of these rules, 5 U.S.C. 533 (a) and (d). The amendments became effective on May 15, 1981.

How to Use Replacement Pages

Reproduced at the end of this document are replacement pages from DAC 76–27. The number at the top of each page (for example, 1:9) identifies the page from the Regulation which is being replaced. The number at the bottom of the page is a reference to the last appearing numbered paragraph on that page, or if none shows, on a preceding page. The vertical line in the right margin indicates where the amendment is located.

Adoption of Amendments

Therefore, the July 1, 1979 edition of the Defense Acquisition Regulation contained in 32 CFR Parts 1–39, Volumes I, II, and III, as supplemented on July 1, 1980, is amended in the DAR paragraphs indicated by substitution of the replacement pages listed in the table:

DAR paragraph	Replacement pages
	Volume I
1–112	1:10, 1:11.
1–201.14	1:17, 1:18.
1–201.29	1:19.
1–201.37	1:20.
1–341	1:77–A, 1:77–B.
1–600	1:90.
1–601.1	1:90.
1–601.3	1:90.
1–601.4	1:91.
1–603	1:91, 1:92.
1–604.1	1:93, 1:94.
1–605	1:95.
1–605.1	1:96.
1–701.1	1:105.
1–704.3	1:122–D.
1–1502	1:197.
3–603.1	3:78.
3–606.1	3:89.
3–807.7	3:129.
3–1100.1	3:173.
3–1100.2	3:173.
Sect. IV, Part 10 (Reserved).	4:49.
4–1100	4:50.
4–1101	4:50, 4:51.
4–1102	4:51.
4–1102.1	4:51.
4–1102.2	4:52.
4–1102.3	4:52.
4–1102.4	4:52.
4–1102.5	4:52.
4–1102.6	4:52.
4–1102.7	4:52.
4–1102.8	4:53.
4–1102.9	4:53.
4–1102.10	4:53.
4–1102.11	4:53.
4–1102.12	4:53.
4–1102.13	4:53.
4–1102.14	4:54.
4–1102.15	4:54.
4–1102.16	4:54.
4–1102.17	4:54.
4–1103	4:54.
4–1103.1	4:54, 4:55, 4:56
4–1103.2	4:56.
4–1104	4:56.
4–1104.1	4:57 through 4:59, 4:60.
4–1104.2	4:60.
4–1104.3	4:60, 4:61
4–1104.4	4:61, 4:62, 4:63.
4–1104.5	4:63, 4:64
4–1104.6	4:64, 4:65.
4–1104.7	4:65, 4:66
4–1104.8	4:66.
4–1104.9	4:66.
4–1104.10	4:66, 4:67, 4:68.
4–1104.11	4:68.
4–1104.12	4:68.
4–1104.13	4:68, 4:69, 4:70.
4–1104.14	4:70.
4–1104.15	4:70.
4–1105	4:70.
4–1106	4:70.
5–900	5:38.
5–903	5:39.
6–001.7	6:3.
6–803.1	6:33.
6–1306.1	6:56.
6–1406.1	6:81.
6–1406.2	6:90.
6–1406.3	6:99, 6:101.
6–1406.4	6:108.
6–1406.5	6:113.
6–1406.6	6:121.
6–1406.9	6:140.
	Volume II
7–104.3	7:33.
7–104.9	7:36 through 7:38–C, 7:45.
7–104.20	7:57.
7–104.32	7:76, 7:76–A.
7–104.84	7:128–F through 7:130.
7–104.101	7:140–B, 7:140–C.
7–204.67	7:205.
7–303.69	7:241.
7–403.65	7:266.
7–504.19	7:271.
7–603.62	7:314–D.
7–606.33	7:332.
7–608.24	7:342–A.
7–705.35	7:369.
7–902.46	7:391.
7–1601.14	7:429.
7–1702.22	7:439.
7–1903.42	7:455.
7–1903.58	7:456.
7–2003.83	7:526–D.
7–2102.23	7:538.
Sect. VII, Part 22 (Reserved).	7:538–A.
7–2300	7:539.
7–2301	7:539.
7–2302.1	7:539.
7–2302.2	7:540.
8–216	8:22.
9–202.2	9:29, 9:29–A
9–202.3	9:93.
9–601	9:56.
9–602	9:57
9–603	9:57.
9–605	9:58, 9:59
12–1007.3	12:44–E
13–301	13:9.
15–205.9	15:22.
15–205.34	15:33–A, 15:36
	Volume III
16–303	16:16
21–109	21:7.
21–111.1	21:8.
21–118	21:12.
21–126	21:20.
21–204.2	21:25–A
22–602.1	22:22.
24–204.4	24:12.
24–205.8	24:21, 24:22.
E–614	E:74.
I–401	I:20.

Dated: July 8, 1981.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

BILLING CODE 3810–70–M

requirements of Federal agencies, and provide all levels of management with data on which to formulate procurement policy as well as to determine the extent of adherence to prescribed policy. Basic to the preparation of all these regular and special reports, so far as they affect individual contracting officers, is DD Form 350 (Individual Procurement Action Report) (Section XXI, Part 1). Each item of this form enters into the preparation of reports furnished the President, the Congress, and other Federal agencies, and is used for management purposes within the Department of Defense. The accuracy, completeness, and timeliness of these reports are fully dependent on the careful preparation and prompt submission of DD Form 350.

1-111 Reports of Suspected Criminal Conduct, Noncompetitive Practices, Kickbacks, and Other Procurement Irregularities.

1-111.1 *Reporting Procedures.* Reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities shall be made by each Department in accordance with procedures set forth in Part 6 of this Section.

1-111.2 *Noncompetitive Practices.*

(a) Unless bids or proposals are genuinely competitive, contract prices tend to be higher than they should be. If the Secretary concerned or his representative considers that any bid received after formal advertising evidences a violation of the antitrust laws, he is required by 10 U.S.C. 2305(d) to refer such bids to the Attorney General for appropriate action. Similarly, evidence of such violations in negotiated procurements should be referred to the Attorney General. Practices which are designed to eliminate competition or restrain trade and which may evidence possible violations of such laws include collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of the business, identical bids, etc.

(b) Reports of identical or equal bids or proposals should not be submitted automatically, but only where there is some reason to believe that those bids or proposals may not have been arrived at independently. Such reports should be accompanied by conformed copies of the bid or proposal, other contract documents, and supporting data. The report should set forth:

(i) the noncompetitive pattern or situation under consideration;

(ii) purchase experience in the same product or service for a reasonable period of time (one or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstract of bids;

(iii) community of financial interest among bidders, insofar as is known;

(iv) the extent, if any, to which specification requirements or patents restrict competition,

(v) information which may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and

(vi) any other information deemed pertinent.

(c) The reports required by this paragraph do not satisfy the reporting requirement contained in 1-114.

1-111.3 *Subcontractor Kickbacks.* The Anti-Kickback Act (41 U.S.C. 51) prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, commission, compensation, gift, or gratuity to the prime contractor or any higher tier subcontractor or to any officer, partner, employee, or agent of the prime contractor, of any higher tier subcontractor, as an inducement or acknowledgment for the award of a subcontract or order. The Act further provides that the amount of any such fee, commission, or compensation, or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. It also creates a conclusive presumption that the cost of any such prohibited payment has been included in the price of the subcontract or order and ultimately borne by the Government. The Act provides for the recovery on behalf of the United States action, or by set-off of moneys otherwise owing to the subcontractor either by the United States directly or by the prime contractor. The Act imposes criminal penalties on any person who knowingly, makes or receives, directly or indirectly, any such prohibited payment.

1-111.4 *Contractor Gratuities to Government Personnel.*

(a) The right of a contractor to proceed under the contract may be terminated if it is found, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the Government to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract.

(b) To constitute a violation under the Gratuities clause (7-104.16) three elements must be present.

(i) the contractor must have a contract which contains the Gratuities clause;

(ii) the contractor, his agent, or other representative must have offered or given a gratuity to an officer, official, or employee of the Government; and

(iii) the gratuity must have been offered or given with the intent to obtain a contract or favorable treatment in the awarding or amending, or the making of determinations concerning the performance, of a contract (in this respect, intent generally must be inferred because an admission is rarely obtainable).

A lack of any of these elements will cause an action taken by the Government pursuant to the Gratuities clause to fail. Procedural requirements for gratuities hearings are set out in Appendix D.

1-112 Federal Property Management Regulations, Federal Procurement Regulations, and GSA Regulations Relating to Acquisition of Supplies and Services. Except for acquisition of ADPE under delegation of contracting authority from GSA, all policy and procedural matters of Federal Procurement Regulations and General Services Administration Regulations applicable to the Department of Defense within the scope of this Regulation are as set forth herein. Changes will be

implemented through the DAR system. The applicable DoD Directives covering the assignments of responsibility for the purchasing of specific supplies under Interagency Purchase Assignment will be incorporated by reference in this Regulation. For DoD implementation of Federal Supply Schedules, see Section V, Part 1.

1-113 Standards of Conduct.

1-113.1 *Government Personnel.* All governmental personnel engaged in procurement and related activities shall conduct business dealing with industry in a manner above reproach in every respect. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof. See AR600-50, for the Army; SECNAV Instr. 5370.2E of 29 November 1967, for the Navy; AFR 30-30, for the Air Force; DLAR 5500.1, for the Defense Logistics Agency; DCA Inst. 220-50-1, for the Defense Communications Agency; DNA Inst. 5500.7A, for the Defense Nuclear Agency; and DMA Inst. 5500.1, for the Defense Mapping Agency.

1-113.2 *Organizational Conflicts of Interest.*

(a) Appendix G—Rules for the Avoidance of Organizational Conflicts of Interest sets out some of the more essential policy considerations of the Department of Defense with respect to relationships with non-Federal institutions. Specifically, Appendix G describes examples of various organizational conflicts of interest which might come into being, and rules for avoidance of such conflicts; and it provides that action must be taken to avoid placing a contractor in a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of the rules. However, the Appendix cannot of itself impose any obligations on the contractor; such obligations must be imposed by a contract clause designed to carry out the intent of the Appendix. Furthermore, potential contractors must be advised in the solicitation as to the extent of applicability of the rules, and must be given an opportunity to negotiate on the terms of the clause and its application.

(b)(1) The contracting officer is responsible for applying the rules in the Appendix to contracts under his cognizance and shall determine whether each proposed procurement is subject to the Appendix.

(2) If the contracting officer initially determines with respect to a particular procurement that a potential conflict of interest exists, he shall, before issuing the solicitation, prepare a written analysis justifying his recommendation to contract with either no restraint, partial restraint, or strict hardware exclusion provisions, including a statement as to which of the four rules (or other conflict of interest not stated in the rules) he considers applicable, and where appropriate a recommended solicitation notice and clause designed to avoid the organizational conflict of interest. This analysis and recommendation shall be reviewed by the Head of the Procuring Activity who shall examine the circumstances for benefits and detriments to both the Government and potential contractors, and who shall either approve, modify or reject the contracting officer's recommendation to contract with either no restraint, partial restraint or strict hardware exclusion provisions. In the event the Head of the Procuring Activity modifies, or rejects the contracting officer's recommendation, he shall document his decision. A standard form of solicitation notice or clause is not prescribed in this Regulation since such notices and clauses must be especially adapted to apply the principle of the rules to the specific facts of each contractual situation. The clause shall spell out the specific extent of any future restrictions on the contractor. The restrictions of the proposed clause shall also have a specific time period of effectiveness. As a general rule, the time effectiveness of any clause which excludes the contractor from participation in subsequent procurement shall have a fixed term of reasonable duration as appropriate, except that where Rule 1 of Appendix G is involved the exclusion shall be permanent. A fixed term of reasonable duration is measured by the time required to avoid the circumstance of unfair competitive advantage. This is variable; for example, it may run to the date of award of the first production contract or for a stated period of time. (See Rules 2 and 3 of Appendix G.) In no event shall an exclusion be stated in the clause without a specific date, or an event certain, terminating the effectiveness of the exclusion except where Rule 1 is involved.

(3) The contracting officer shall include his recommendations and the Head of the Procuring Activity's determination, together with the written analysis, in the negotiation file or record. The approved solicitation notice and proposed clause shall then be included in the solicitation, together with a clear statement that the proposed clause and the application of the Appendix are subject to negotiation.

(4) In no case shall the clause included in a solicitation or in a contract (including letter contracts) pursuant to this paragraph 1-113.2 defer the determination of the application of the Appendix to a time after the contract has been awarded.

(5) When a contract contemplates a Rule 4 situation, it is incumbent on the contracting officer to assure himself that the agreement called for by Rule 4 is in fact executed, and that copies thereof are made available to the Government.

(c) The contracting officer shall not impose restrictions under the Appendix in follow-on procurements on any prospective contractor in the absence of a specific contractual agreement with that contractor. If, during the effective period of any restriction, procurement responsibility for the system or item involved is transferred from the procuring activity which imposed the restriction that activity shall notify the transferee of the restriction and send it a copy of the contract under which it was imposed.

(d) The Departments shall maintain, in accordance with Departmental procedures, and for an appropriate period of time as determined by the circumstances, a record of all solicitation notices and of all clauses incorporated in contracts pursuant to this paragraph 1-113.2.

1-114 Reporting of Identical Bids.

(a) *General.* Executive Order 10936 dated 24 April 1961, as implemented by the Department of Justice, requires a report to be submitted to the Attorney General on each formally advertised procurement (including small business restricted advertising) over $10,000 which involves identical bids. Identical bids are two or more bids for the same line item which:

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36301

Military District of Washington, U.S. Army;
U.S. Army, Europe;
National Guard Bureau;
Office of the Chief of Engineers;
U.S. Army Communications Command;
Office of The Surgeon General;
U.S. Army Western Command;
Military Traffic Management Command;
U.S. Army Ballistic Missile Defense Organization; and
Assistant Chief of Staff for Automation and Communications.

FOR THE NAVY:
Headquarters, Naval Material Command;
Office of Assistant Deputy Chief of Naval Material for Contracts and Business Management;
Naval Air Systems Command;
Naval Data Automation Command;
Naval Electronic Systems Command;
Naval Facilities Engineering Command;
Naval Sea Systems Command;
Naval Supply Systems Command;
Office of Naval Research;
Navy Aviation Supply Office;
Military Sealift Command;
Ships Parts Control Center;
United States Marine Corps; and
Installations and Logistics Department, Headquarters, U.S. Marine Corps.

FOR THE AIR FORCE:
HQ USAF, Director of Contracting and Acquisition Policy;
Air Force Logistics Command;
Air Force Systems Command;
Strategic Air Command;
Tactical Air Command;
Air Force Communications Command;
Military Airlift Command;
Air Training Command;
Pacific Air Forces;
United States Air Forces in Europe; and
Alaskan Air Command.

FOR THE DEFENSE LOGISTICS AGENCY:
Office of the Deputy Director for Contract Administration Services;
Office of the Executive Director, Procurement and Production;
Defense Supply Centers; and
Defense Personnel Support Center;
Office of Deputy Commander for Subsistence and Commander, Subsistence Field Activities.

FOR THE DEFENSE COMMUNICATIONS AGENCY:
Headquarters, Defense Communications Agency; and
Defense Commercial Communications Office.

FOR THE DEFENSE NUCLEAR AGENCY:
Headquarters, Defense Nuclear Agency.

FOR DEFENSE MAPPING AGENCY:
Headquarters, Defense Mapping Agency, Logistics Office.

FOR THE NATIONAL SECURITY AGENCY:
Headquarters, National Security Agency.

FOR THE DEFENSE SUPPLY SERVICE--WASHINGTON:
Director, Defense Supply Service--Washington

It also includes any other procuring activity hereafter established. The number and designation of particular procuring activities of any Military Department may be changed by directive of the Secretary.

1-201.15 *Secretary* means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department. Secretary shall also include the Director and Deputy Director of the Defense Supply Agency, the Director of the Defense Communications Agency, the Director, Defense Nuclear Agency, the Director, Defense Mapping Agency, and the Director of the National Security Agency, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, such authority shall be exercised by the Assistant Secretary of Defense (Installations and Logistics).

1-201.16 *Shall* is imperative.

1-201.17 *Small Business Concern*. See 1-701.1.

1-201.18 *Supplemental Agreement* means any contract modification which is accomplished by the mutual action of the parties. (See 16-103.)

1-201.19 *Supplies* means all property except land or interest in land. It includes public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts, and accessories thereto; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing. "Supplies" as used in this Regulation is synonymous with "property" as described in 10 U.S.C. 2303(b).

1-201.20 *United States*, when used in a geographic sense, means the States and the District of Columbia.

1-201.21 *Construction*. See 18-101.1.

1-201.22 *Classified Procurement* is that which requires access to classified information ("Confidential, Secret or Top Secret") either to submit a bid or proposal, or to perform the contract; see 1-320.

1-201.23 *Designee*, as used, for example, in the phrase, "Head of a Procuring Activity or his designee", may include one or more officials.

1-201.24 *Purchasing Office* means the office which awards or executes a contract for supplies or services and performs post-award functions not assigned to a contract administration office.

1-201.25 *Contract Administration Office* means the office which performs assigned functions related to the administration of contracts, and assigned pre-award functions.

1-201.26 *Assignment of Contract Administration* means that process whereby identified functions, duties, or responsibilities related to the administration of

contract are assigned either by this Regulation or by individual assignment to a contract administration office.

1-201.27 *Transfer of a Contract* means that process whereby all future responsibility for a contract held by an individual or office is transferred, in writing by proper authority, to another office to take action necessary to carry out the responsibility transferred.

1-201.28 *Local Purchase* means the authorized purchase of materials, supplies and services by an installation for its own use or the use of an installation or activity logistically supported by it. Local purchase is not limited to the immediate geographical area in which the purchasing installation is located.

1-201.29 *Automatic Data Processing Equipment (ADPE)* means:

(i) Digital and Analog Computer components and systems, irrespective of type of use, size, capacity or price;

(ii) all peripheral, auxiliary, and accessorial equipment used in support of Digital and/or Analog Computers, either cable connected, or "self standing" and whether selected or acquired with the computers or separately;

(iii) Punched Card Machines (PCM) and systems used in conjunction with or independently of Digital or Analog Computers; and

(iv) Digital and Analog Terminal and Conversion equipment that is acquired solely or primarily for use with a system which employs a Computer or Punched Card Machines.

1-201.30 *Paying Office* means the office which makes payments under the contract.

1-201.31 *Supporting Contract Administration* means the performance by another contract administration office of specific contract administration functions as required by the office to which the contract has been assigned for administration.

1-201.32 *Standard Dating Technique*. When it is necessary to insert the date on any contractual document or required report, it shall be written using seven characters in the following order: year (two digits), month (three letters), and day (two digits). For example, July 6, 1968, would be entered on contractual documents and required reports as "68 JUL 06."

1-201.33 *Exhibit* means a document attached to a procurement instrument, referenced by its capital letter identifier in a line or subline item in the procurement instrument Schedule, which establishes deliverable requirements in the attached document as an alternative to establishing an extensive list of line or subline items in the procurement instrument Schedule; see 20-305.

1-201.34 *Classified Contract* is any contract that requires or will require access to classified information by the contractor or his employees in the performance of the contract. A contract may be a classified contract even though the contract document is not classified.

1-201.35 *Data* means recorded information, regardless of form or characteristic.

1-201.36 *Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document

research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

1-201.37 *Reserved.*

1-201.38 *Computer Program* means a series of instructions or statements in form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs; as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

1-201.39 *Automatic Data Processing System (ADPS)* means an interacting assembly of procedures, processes, methods, personnel, communications, and automatic data processing equipment to perform a series of data processing operations—a combination of automatic data processing resources and automatic data systems.

1-201.40 *Offer* means *bid* where the procurement is advertised, and *proposal* where the procurement is negotiated.

1-201.41 *Major Systems Acquisition* is an acquisition specifically designated by the Secretary of Defense / Deputy Secretary of Defense under the procedures set forth in Department of Defense Directive Number 5000.1, and such other systems as designated by the Secretaries of the Military Departments.

perty. The rule stated in 1-336.3 also applies to the use of underlying air carriers by international air freight forwarders engaged in such foreign air transportation.

(b) In order that bills submitted by international air freight forwarders engaged in international air transportation may be paid upon presentation, such carriers shall submit with their bills a copy of the airway bill or manifest showing the underlying air carriers utilized with such justification certifications as they may have for the use of underlying non-certificated air carriers. Use of the prescribed certification satisfies the justification requirement.

1-337 Should Cost. Should cost is a concept of contract pricing that employs an integrated team of Government procurement, contract administration, audit and engineering representatives to conduct a coordinated, indepth cost analysis at the contractor's plant. The purpose is (i) to identify uneconomical or inefficient practices in the contractor's management and operations and to quantify the findings in terms of their impact on cost, and (ii) to develop a realistic price objective which reflects reasonably achievable economies and efficiencies. A should cost review will be made in connection with the procurement of a system or item which will require a DSARC approval, unless the contracting officer makes written determination that the potential savings to be realized do not justify the expense of such a should cost review. Such determination shall be included in the Procurement Plan (see 1-2100). Should cost reviews should also be considered in procurements when: there are future year production requirements for substantial quantities of like items; there has already been some initial production; the competitive forces are insufficient to ensure economical and efficient performance (*e.g.*, sole source); the specification is comparatively definitive and not likely to be changed; and the present and potential value of the work to be performed is substantial.

1-338 Design to Cost.

(a) Cost is a contract parameter equal in importance with technical, delivery and performance requirements throughout the design, development, production and operation of defense systems, subsystems, components and equipments. Design to cost is a concept which recognizes this principle by requiring the establishment of cost elements as management goals to achieve the best balance between life cycle cost, acceptable performance, and schedule. Cost, under this concept, is a design parameter during design and development, and a management discipline throughout the acquisition and operation of the system or equipment. Policies and procedures for the application of design to cost are contained in DODD 5000.28.

(b) The principles of design to cost shall be applied in all procurements for Major Defense Systems (DODD 5000.1) unless exempted by the Secretary of Defense. Design to cost principles shall also be applied to the acquisition of systems, subsystems, and components below the thresholds for Major Defense Systems, to the extent prescribed in DODD 5000.28, and in accordance with Departmental procedures.

(c) Design to cost considerations are essential elements of sound procurement planning under 1-2100. Such planning shall include the establishment of design to cost objectives and goals and determinations of how they are to be applied, tracked, and enforced. To be effective, the design to cost approach should

11 01061

be planned at the inception of the program, should encompass all phases of the program, and should be kept current by regular reviews both at appropriate intervals and at program milestones.

(d) In solicitations and contracts including design to cost principles, consideration should be given to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DODD 4105.62). This is to facilitate product development at the lowest life cycle cost consistent with mandatory schedule and performance requirements.

(e) For the relationship of design to cost to value engineering, see 1-1707.

1-339 Energy Conservation.

(a) The Energy Policy and Conservation Act requires that Federal procurement policies governing requirements determinations and source selection decisions provide for consideration of (i) conservation of energy and (ii) the relative energy efficiency of alternative goods or services capable of satisfying the Government's needs.

(b) The energy conservation and energy efficiency criteria shall be applied in the determination of requirements and source selection decisions whenever the application of such criteria would be meaningful, practical, and consistent with agency programs and operational needs. Under this policy, energy conservation and efficiency criteria shall be considered for application along with price and other relevant factors in the preparation of solicitations, the evaluation of offers, and the selection of bids and proposals for award.

(c) With respect to the procurement of consumer products, executive agencies shall take cognizance of energy use / efficiency labels and prescribed energy efficiency standards as they become available.

1-340 Geographic Distribution of Department of Defense Subcontract Dollars. Section 836 of the 1978 DoD Appropriation Act requires DoD to render an annual report to Congress on the geographical distribution of DoD subcontract dollars. To implement this requirement, the clause in 7-104.78 shall be inserted in any contract to be awarded which is expected to exceed $500,000, or when any modification increases the aggregate amount of a contract to $500,000 or more. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to such a modification.

1-341 Reserved.

1-342 Certification of Requests for Adjustment or Relief Exceeding $100,000.

(a) Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Public Law 95-485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Public Law 85-804, and similar requests exceeding $100,000. This certification must be signed by a senior company official in charge at the plant or location involved. Although the law only requires submission of the certification with requests exceeding $100,000, even if the requirement is not set forth in the contract, the clause contained in 7-104.102 shall be inserted in all contracts expected to exceed $100,000 in value.

(b) Submission of the Section 813 certification is required in addition to any certification required by the Truth in Negotiations Act and by 3-807.

(c) Section 6(c) of the Contract Disputes Act, Public Law 95-563, also requires the certification of claims. The Section 813 certification described above is due when the claim or request for relief is first asserted to the Government. However, the certification under the Contract Disputes Act is due only after a dispute has come into being and the contractor submits a written claim for the purpose of obtaining a contracting officer's decision. A single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, can be used to comply with both statutes in those situations where the first assertion of a claim or request for relief coincides with the inception of a contract dispute.

Part 4—Procurement Responsibility and Authority

1-400 Scope of Part. This Part deals with the procurement responsibility and authority of (i) the Head of a Procuring Activity, (ii) purchasing offices, (iii) contract administration offices, and (iv) contracting officers, and with the appointment of contracting officers. This Part also imposes limitations upon the authority to enter into and administer contracts. For the purpose of this Part, the term "contracting officer" does not include authorized representatives of the contracting officer.

1-401 Responsibility of Each Procuring Activity. Except as otherwise prescribed by procedures of each respective Department, the Head of a Procuring Activity is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his activity.

1-402 Authority of Contracting Officers. Contracting officers at purchasing offices (see 1-201.24) are authorized to enter into contracts for supplies or services on behalf of the Government, and in the name of the United States of America, by formal advertising, by negotiation, or by coordinated or interdepartmental procurement; and when authorized by 20-703 to administer such contracts, in accordance with this Regulation. This authority is subject to the requirements prescribed in 1-403 and 1-404 and any further limitations, consistent with this Regulation, imposed by the appointing authority. Contracting officers at contract administration offices (see 1-201.25) are, except as provided in 20-703.3, authorized to perform the applicable contract administration functions (see 1-406) and to perform additional procurement functions when delegated by the purchasing office.

1-403 Requirements To Be Met Before Entering Into Contracts. No contract shall be entered into unless all applicable requirements of law and of this Regulation, and all other applicable procedures, including business clearance and approval, have been met.

1-404 Special Requirements To Be Met Before Entering Into Negotiated Contracts. In addition to the requirements in 1-403, no negotiated contract shall be entered into until the determinations and findings required by Section III, Parts 3 and 4, with respect to the circumstances justifying negotiation and with respect to any use of a special method of contracting have been made.

1-405 Selection, Appointment, and Termination of Appointment of Contracting Officers. The selection, appointment, and termination of appointment of contracting officers shall be made only by the Secretary of the Department, the Head of a Procuring Activity, or their designees.

1-405.1 *Selection.*

(a) *Considerations.* In selecting contracting officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, reputation, and ethics.

(b) *Evaluation of Experience, Training, and Education.* In considering experience, training, and education, the following shall be evaluated:

(i) experience in a Government procurement office, commercial procurement, or related fields,

(ii) formal education or special training in business administration, law, accounting, or related fields,

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36005

propriety, the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:

(i) if an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected;

(ii) if an award has been made or bid or offer has been accepted, take action to enforce the covenant in accordance with its terms; i.e., as the best interest of the Government may appear, annul the contract without liability or recover the amount of the fee involved;

(iii) consider the bidder's or offeror's future eligibility as a contractor; or

(iv) consider referring the case to the Department of Justice.

1-508.4 *Reports.* A report shall be made in accordance with 1-608 when the Chief of the Purchasing Office recommends referral to the Department of Justice under 1-508.3(iv).

1-509 Preservation of Records.

(a) Each Department shall preserve as a permanent record for enforcement or report purposes the original executed copy of any representation and completed Standard Form 119, or statement in lieu of form, together with a record of any other pertinent data, including data as to action taken. There shall be no regular retirement of any Standard Form 119 maintained in this record by any procuring activity. However, in any case where the receipt of a new Standard Form 119 makes previously received information obsolete, the obsolete information may be destroyed.

(b) The second copy of Standard Form 119, or statement in lieu of form, shall be filed with and shall remain a part of the contract file.

Part 6—Debarment, Ineligibility, and Suspension

1-600 Scope of Part.

(a) This Part prescribes policies and procedures relating to the debarment and suspension of bidders, offerors, contractors, subcontractors, and other firms and individuals, and to ineligibility of bidders and offerors under section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)).

(b) For the purpose of this Part, the authorized representatives of the Secretaries are:

(i) in the Army, an Assistant Judge Advocate General;

(ii) in the Navy, the Chief of Naval Material;

(iii) in the Air Force, the Deputy Chief of Staff, Research, Development and Acquisition;

(iv) in the Defense Logistics Agency, the Counsel;

(v) in the National Security Agency, The Director;

(vi) in the Defense Communications Agency, the Counsel;

(vii) in the Defense Nuclear Agency, the Director; and

(viii) in the Defense Mapping Agency, the Counsel.

1-601 Establishment and Maintenance of Records and Lists of Firms or Individuals Debarred, Ineligible or Suspended.

1-601.1 *General.* Each Department shall maintain a record of firms and individuals which it has debarred or suspended. As provided in this Part, contract awards of any character, including sales, will not be made to and bids or proposals will not be solicited from, and subcontracts will not be approved or consented to for listed firms and individuals.

1-601.2 *Information Contained in Departmental Records.* Each Departmental record shall show as a minimum the following information:

(i) names and addresses of those firms or individuals debarred, ineligible, or suspended (names will be set forth in alphabetical order with appropriate cross reference where more than one name is involved in a single action);

(ii) basis of authority for each action and a brief description of the violation charged;

(iii) extent of restrictions imposed; and

(iv) termination date for each debarred listing.

1-601.3 *Joint Consolidated List.* The Department of the Army is responsible for the issuance of a Joint Consolidated List (DA Circular 715-1; NAVMAT P-4386, AFR 70-23, MCO 4386.2J; DLA Regulation 4105.3; DCAI 260-145-3; DNAI 4105.1 of firms and individuals debarred, declared ineligible, or suspended under 1-603. The authorized representative for the Army (see 1-600(b)) shall be furnished by the authorized representative of each of the other Departments, not later than the third day of each month, the information set forth in 1-601.2, including additions, deletions, or modifications of information previously furnished, necessary for issuance of the Joint Consolidated List which shall be a composite of the information provided by the Departments. Each Department shall be responsible for determining the number of copies of the Joint Consolidated List required and for distributing the list within the Department. The Department of the Army will furnish copies to the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Policy).

1-601.4 *Protection of Records.* Records relating to debarment and suspension shall be protected to prevent inspection of the contents by personnel who are not required to have access to such information. The reports made pursuant to 1-608 and all related internal correspondence shall be marked "For Official Use Only" unless the information warrants a security classification. The Joint Consolidated List shall not be considered part of the records relating to debarment and suspension which require protective markings.

1-601.5 *Limitation.* No firm or individual will be listed on a consolidated list for causes or under conditions other than those set forth in this Part.

1-601.6 *Inquiries from Debarred, Ineligible, or Suspended Individuals and Firms.*

(a) *Debarred and Suspended Firms and Individuals.* All inquiries relating to debarred or suspended firms and individuals shall be referred or forwarded to the authorized representative of the Secretary concerned.

(b) *Ineligible or Disqualified Firms or Individuals.* Inquiries from contractors or individuals listed as ineligible or disqualified by the Comptroller General and the Department of Labor under the Walsh-Healey or Davis-Bacon Acts shall be answered by indicating the nature of the prohibition, as shown on the consolidated list, and requesting that the inquirer communicate with the Wage and Hour Division, Department of Labor, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20210.

1-602 Reserved.

1-603 Grounds for Listing and Treatment To Be Accorded Listed Concerns.

(a) A firm or individual may be listed for any of several reasons. The particular reason for listing determines the consequences thereof. The various types of listing and the treatment to be accorded each type are set forth below:

Type A includes debarments in any of the following categories:

(i) those listed by the Comptroller General pursuant to section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37) for violating the requirements of that Act;

(ii) those listed by the Comptroller General pursuant to section 3 of the Davis-Bacon Act (40 U.S.C. 276a-2(a)) for violating the requirements of that Act, and

(iii) those which the Secretary concerned or his authorized representatives has determined to debar for any of the causes and under all of the conditions set forth in 1-604.

Contracts shall not be awarded to, nor bids or proposals solicited from, nor invitations for bids or requests for proposals furnished to, concerns which are listed as Type A and which are debarred because of Walsh-Healey or Davis-Bacon violations (categories (i) and (ii) above). Contracts shall not be awarded to, nor bids or proposals solicited from nor invitation for bids or requests for proposals furnished to, nor subcontracts be approved for, concerns which are listed as Type A within category (iii) above, unless the Secretary concerned or his authorized representative determines it to be in the interest of the Government to make an exception for a particular procurement action, or unless the listing in-

dicates that the debarment is not to apply to sales contracts or to procurement contracts (see 1-606).

Type B includes concerns which the Secretary of Labor has determined to be ineligible because they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)). Under that Act, procurement contracts in excess of $10,000 shall not be awarded the concerns under Type B listings for those materials, articles, or equipment with respect to which the concern has been found to be ineligible. However, contracts in any amount may be awarded, and bids or proposals may be solicited, for commodities with respect to which the concern has not been declared ineligible. In connection with ineligibility under the Walsh-Healey Act (Type B listing only), the name of an individual may be listed as affiliated with an ineligible firm. This listing is intended only to prevent such individuals from evading ineligibility merely by changing their business names and addresses. It does not prohibit other firms in which such individuals have an interest, and which are qualified manufacturers or regular dealers from receiving contracts subject to the Walsh-Healey Public Contracts Act.

Type C includes concerns which the appropriate Secretary, pursuant to section 3(b) of the Buy American Act (41 U.S.C. 10b(b)), has found to have failed to comply with the "Buy American Act" clause required for construction contracts (see 18-510). Contracts for the construction, alteration, or repair of public buildings or public works in the United States or elsewhere shall not be awarded to concerns under Type C listings nor shall bids or proposals for such work be solicited from such concerns. However, concerns under Type C listings may be awarded contracts and may be solicited for bids or proposals for other than the construction, alteration, or repair of public buildings or public works, unless listed under Type A.

Type D includes concerns which have been suspended under the conditions set forth in 1-605. Concerns under Type D listings shall not be awarded contracts or solicited for bids or proposals, or be approved for subcontracts subject to 1-603(c), except when the Secretary concerned or his authorized representative determines it to be in the best interest of the Government to make an exception for a particular procurement or where the listing indicates that the suspension does not apply to sales contracts or to procurement contracts (see 1-606).

Type E includes concerns which have been reported by the Secretary of Labor to have violated labor standards provisions of any of the following statutes: Anti-Kickback Act (48 Stat. 948) as amended (40 U.S.C. 276c); Contract Work Hours Standards Act (76 Stat. 357-360), National Housing Act (53 Stat. 804) as amended (12 U.S.C. 1703); Hospital Survey and Construction Act (60 Stat. 1040); Federal Airport Act (60 Stat. 170) as amended (49 U.S.C. 1101); Housing Act of 1949 (63 Stat. 413) (42 U.S.C. 1441); School Survey and Construction Act of 1950 (64 Stat. 967) (20 U.S.C. 251), Federal Civil Defense Act of 1950 (64 Stat. 1245) as amended; Defense Housing and Community Facilities and Services Act of 1951 (65 Stat. 293) as amended (42 U.S.C. 1591); and Area Redevelopment Act of 1961 (75 Stat. 47). Concerns under Type E listings shall not be awarded contracts which are subject to any of the foregoing statutes.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36607

Type F includes concerns which have been debarred by the appropriate Secretary or the Executive Vice Chairman of the President's Committee on Equal Employment Opportunity for noncompliance with the Equal Opportunity clause. Concerns under Type F listings may not be awarded contracts or be solicited for bids.

(b) Administration of current contracts in all phases may be continued, notwithstanding the listing of a contractor, unless otherwise directed by the Secretary concerned or his authorized representative. However, payment of all or part of funds due or to become due may be withheld when such action is determined to be in the best interest of the Government by the Secretary concerned or his authorized representative.

(c) When a listed concern is proposed as subcontractor, the contracting officer should decline to consent to or approve subcontracting with such concern in any instance in which consent or approval is required of the Government before the subcontract is placed (see 7-104.23 and 7-203.8), unless the Secretary or his authorized representative determines such placement to be in the best interest of the Government.

1-604 Administrative Debarment of Firms or Individuals (Type A). The Secretary of each Department, or his authorized representative (see 1-600(b)), except as limited below, is authorized to debar in the public interest a firm or an individual for any of the causes and under all of the conditions set forth below. Debarment of a firm or individual shall operate to debar such firm or individual throughout the Department of Defense. Placing the name of an individual or firm on the consolidated list will be for the purpose of protecting the interest of the Government and not for punishment.

1-604.1 *Causes for Debarment.* The following are causes for debarment:

(i) conviction by or a judgment obtained in a court of competent jurisdiction for—

(A) commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract, or any subcontract thereunder;

(B) violation of the Federal antitrust statutes arising out of submission of bids or proposals to the Government; or

(C) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor or subcontractor.

If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof. The foregoing does not necessarily require that a firm or individual be debarred. The decision to debar is discretionary; the seriousness of the offense and all mitigating factors should be considered in making the decision to debar

(ii) clear and convincing evidence of violation of contract provisions of a contract with the Government as set forth below, when the violation is of a character so serious as to justify debarment action—

(A) willful failure to perform in accordance with the specifications or delivery requirements in a contract (including violation of the Buy American Act with respect to other than construction contracts);

(B) a history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; *provided*, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. (Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment.);

(C) violation of the contractual provision against contingent fees; or

(D) violation of the Gratuities clause, as determined by the Secretary in accordance with the provisions of the clause.

(iii) for other cause of such serious and compelling nature, affecting responsibility as a Government contractor, or subcontractor, as may be determined by the Secretary of the Department concerned to justify debarment; or

(iv) debarment for any of the above causes by some other executive agency of the Government. (Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts obtained by the original debarring agency.)

1-604.2 *Period and Scope of Debarment.*

(a) *Period of Debarment.* All debarments shall be for a reasonable specified period of time, commensurate with the seriousness of the cause therefor. As a general rule, a period of debarment shall not exceed three years. In the event debarment is preceded by suspension, consideration shall be given to such period of suspension in determining the period of debarment. Prior to the expiration of the debarment period, the Department or Agency which imposed the debarment should review all the facts and circumstances relating to the debarment. The debarment shall be removed at the expiration of the specified period unless it is determined that debarment for an additional period is required in order to protect the Government's interest. However, a debarment shall not be extended for an additional period solely on the basis of the facts and circumstances on which the initial debarment action was based. When debarment for an additional period is considered necessary, notice of the proposed debarment shall be furnished to the individual or firm concerned in accordance with 1-604.3. The debarment of an individual or firm may be modified by reducing the period thereof when the circumstances justify such action. With respect to debarment for violation of the Equal Opportunity clause (Type F), the debarment shall be removed prior to the expiration of the debarment period by the Secretary who imposed the debarment upon receipt of satisfactory evidence that corrective action has been taken.

(b) *Scope of Debarment.*

(1) Debarment may include all known affiliates of a concern or individual. Business concerns are considered affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or a third controls or has the power to control both.

(2) A decision to include known affiliates in a proposed debarment is an individual determination which must be made on a case by case basis.

(3) The fraud or criminal conduct of an individual may be imputed to the business firm with which he is connected when the impropriety involved was performed in the course of official duty or with the knowledge or approval of the business firm.

1-604.3 *Notice of Debarment.*

(a) The firm or individual and its known affiliates concerned shall be furnished with a written notice of the proposed debarment, stating as a minimum:

(i) the fact that debarment is being considered;

(ii) the reasons for the proposed debarment; and

(iii) the period of time to be afforded to present information for consideration.

Information in opposition to a proposed debarment may be presented in person, in writing, or through representation. The period of time to be afforded to present information for consideration shall be limited to 30 days unless the subject of the proposed debarment requests additional time. When no additional time is requested, the debarment determination, including notice to the firm or individual and known affiliates involved, shall be completed within 90 days. If the subject of the proposed debarment requests additional time to present information, the 90 day period shall be extended commensurately. When no suspension is in effect under 1-605, the notice of proposed debarment shall state that no contracts will be awarded pending the debarment determination. If debarment is effected, the firm or individual shall be notified in writing within 10 days after determination of debarment has been made. This notice shall:

(i) reference the earlier notice of proposed debarment;

(ii) specify the reasons for debarment;

(iii) state the period of debarment, including effective dates; and

(iv) advise that the debarment is effective throughout the Department of Defense.

If, following the notice of proposed debarment, a determination is made that debarment will not be effected, the firm or individual shall be notified in writing accordingly.

(b) Copies of the notice of debarment and of any removals from debarment prior to termination of the specified period shall be furnished to the General Services Administration.

(c) The notices referred to in (a) and (b) above shall be sent by certified mail return receipt requested.

1-605 Suspension of Firm or Individual. Suspension of a contractor, subcontractor, bidder, or offeror is a drastic action which must be based upon adequate evidence rather than mere accusation. In assessing adequate evidence, consideration should be given to how much credible information is available, its reasonableness in view of surrounding circumstances, corroboration or lack thereof as to important allegations, and inferences which may be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. Placing the name of an individual or firm on the consolidated list will be for the purpose of protecting the

interest of the Government and not for punishment. Suspension is an administrative determination which may be modified when determined to be in the interest of the Government.

1-605.1 *Causes for Suspension.* The Secretary or his authorized representative (see 1-600(b)) may, in the interest of the Government, suspend a firm or individual:

(i) suspected, upon adequate evidence, of—

(A) commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract or subcontract;

(B) violation of the Federal antitrust statutes arising out of the submission of bids and proposals to the Government; or

(C) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility as a Government contractor or subcontractor.

(ii) for other cause of such serious and compelling nature, affecting responsibility as a Government contractor, or subcontractor, as may be determined by the Secretary of the Department concerned to justify suspension.

Suspension of a firm or individual by the Secretary or his authorized representative shall operate to suspend such firm or individual throughout the Department of Defense.

1-605.2 *Period and Scope of Suspension.*

(a) *Coordination with Department of Justice.* Upon suspension, notice shall be furnished in accordance with 1-605.3. Except as provided in (b) below, when a request for a hearing is received, the formal advice of the Department of Justice shall be solicited concerning the possible impact of release of evidentiary material on possible civil or criminal action against the firm or individual. (If such advice is orally given, a request will be made that the Department of Justice promptly confirm it in writing.) Based upon this advice, the Secretary or his authorized representative shall determine whether, and to what extent, a hearing should be held.

(1) If a hearing is granted, it will be held not later than 20 days after receipt of the request. The Secretary or his authorized representative shall promptly decide after the hearing whether to continue or terminate the suspension and notify the firm or individual accordingly.

(2) If it is determined, based upon the advice received from the Department of Justice, that to hold a hearing would adversely affect possible civil or criminal prosecution against the firm or individual, this determination will be reduced to writing and made a part of the formal record. Notice shall then be furnished to the firm or individual within 20 days after receipt of the request for a hearing that substantial interests of the Government would be prejudiced if a hearing were held but that any information or argument in opposition to the suspension may be presented in person, in writing, or through representation. Any information or argument submitted will be promptly considered by the Secretary or his authorized representative and, if such action is deemed warranted, the suspension shall be terminated

b. Manufacturing Industries

1. Food Canning and Preserving Industry—For food canning and preserving, the number of employees of the concern and its affiliates must not exceed 500 persons, exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(k)

2. Refined Petroleum Products—Any concern bidding on a contract for a refined petroleum product other than Paving mixtures and blocks, Asphalt felts and coatings, Lubricating oils and greases, or Products of petroleum and coal, not elsewhere classified, is classified as small if (1)(i) its number of employees does not exceed 1,500 persons; (ii) it does not have more than 50,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased; and (iii) the product to be delivered in the performance of the contract will contain at least 90% components refined by the bidder from either crude oil or bona fide feed stocks: *Provided*, however, that a petroleum refining concern which meets the requirements in subdivisions (i) and (ii) of this subparagraph may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in subdivision (iii) of this subparagraph: And, *provided further*, that the exchange of products for products to be delivered to the Government will be completed within 90 days after expiration of the delivery period under the Government contract and that any product furnished pursuant to a bona fide exchange agreement must be for delivery in the same Petroleum Administration for Defense (PAD) District as that in which the small refinery is located; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under subparagraph (1) of this paragraph The proviso that the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feedstocks contemplates that, in accomplishing such refining, the bidder will utilize his own employees and facilities which he owns or obtains under a bona fide lease as distinguished from any other arrangement having the same effect as a lease. The proviso permitting a concern which meets the requirements in subdivision (1)(i) and (ii) of this paragraph to furnish the product of a refinery not qualified as a small business if such product is obtained pursuant to a bona fide exchange agreement which meets prescribed requirements, contemplates that the product

exchanged by the bidder for the product to be furnished, shall have been refined by the bidder utilizing only his own employees and his own facilities or facilities obtained through a bona fide lease.

3. Pneumatic Tires—For passenger cars, motorcycles, truck, bus, and off-the-road pneumatic tires, a concern is classified as small when bidding on a contract for the above listed items: *Provided*, that (i) the value of the above types of pneumatic tires which it manufactured in the United States during the preceding calendar year is more than 50% of the value of its total worldwide manufacture, (ii) the value of these pneumatic tires which it manufactured worldwide during the preceding calendar year was less than 5% of the value of all such tires manufactured in the United States during said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10% of the total value of such products manufactured or otherwise produced or sold in the United States during said period. This section does not apply to acquisitions for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, is considered for size standard purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

4. Passenger Cars—A company is classified as small if it is bidding on a contract for passenger cars: *Provided*, that (i) the value of the passenger cars which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50% of the value of its total worldwide manufacture or production of such passenger cars, (ii) the value of the passenger cars which it manufactured or otherwise produced during the preceding calendar year was less than 5% of the total value of all such cars manufactured or produced in the United States during the said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10% of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

5. Rebuilding of Machinery on a Factory Basis—Any concern bidding on a contract for the rebuilding of machinery or equipment on a factory basis is classified as small business *provided*, the purpose of the rebuilding is to restore such machinery or equipment to as serviceable and as like new condition as possible and the number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item. The size standard is not limited to concerns who are manufacturers of the original item but is applicable to all bidders or offerors. The term "rebuilding on a factory basis" as used in this subsection does not include ordinary repair services such as those involving minor repair and/or preservation operations.

6. Fluid Milk — Any concern bidding on a contract for fluid milk classified in SIC Code 2026 is small if its number of employees, exclusive of home delivery routemen, does not exceed 500 persons.

7. Manufacturing Industries Listed in 1-701.5 — For a product classified within an industry listed in 1-701.5, the number of employees of the concern and its affiliates must not exceed the small business size standard established therein for that industry.

8. Manufacturing Industries Not Listed in 1-701.5 — For a product classified within an industry not set forth in this paragraph or in 1-701.5, the number of employees of the concern and its affiliates must not exceed 500 persons.

(vii) participate in determinations concerning responsibility of a prospective contractor (see 1-904) whenever small business concerns are involved;

(viii) participate in the evaluation of a prime contractor's small business, labor surplus, and small disadvantaged business subcontracting plans;

(ix) review and make appropriate recommendations to the contracting officer on any proposal to furnish Government owned facilities to a contractor if such action may hurt the small business program;

(x) assure that participation of small business concerns is accurately reported;

(xi) bring to the attention of the Department Director or Staff Director for Small and Disadvantaged Business Utilization possible contracting opportunities in labor surplus area;

(xii) make available to SBA copies of solicitations when so requested;

(xiii) when a bid from a small business, small disadvantaged business or labor surplus area firm has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(xiv) participate in government-industry conferences to assist small business, small disadvantaged business and labor surplus area concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Minority Business Opportunity Committee meetings;

(xv) advise potential suppliers how they can obtain information about formal advertising and negotiated acquisitions and that they can subscribe to the Commerce Business Daily as a source of information on proposed acquisitions;

(xvi) brief his commander at least once quarterly concerning the status of the installation's small business, small disadvantaged business utilization and labor surplus area programs in relation to goals and objectives established by higher headquarters;

(xvii) participate in the development, implementation and review of automated contracting systems to assure that the interests of small business, small disadvantaged business and labor surplus area firms are fully considered with particular reference to 1-702(b)(v), 1-706.1(d) and 1-706.5;

(xviii) assist program managers as early as possible in the development cycle of major system acquisitions and system programs as pertains to the small business programs;

(xix) assist contracting officers in establishing criteria for and determining acceptability of small business and small disadvantaged business concerns subcontracting plans submitted by prime contractors;

(xx) assure that the installation's small business, small disadvantaged business and labor surplus area business programs are frequently publicized in the appropriate media;

(xxi) assure that the organization maintains a list of products and services which have been placed on repetitive small business set-aside;

(xxii) provide small business, small disadvantaged business and labor surplus area firms information regarding assistance available from Federal agencies such as the Small Business Administration, Office of Minority Business Enterprise, Bureau of Indian Affairs, Office of Economic Development, National Science Foundation, Department of Labor and others including state, trade and other associations;

(xxiii) be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, small disadvantaged business and firms located in labor surplus areas;

(xxiv) recommend to his Commander the activity small business and disadvantaged business utilization overall goals and goals to be placed on subordinate contracting offices; and

(xxv) participate in interagency programs relating to small business, small disadvantaged business and labor surplus area matters as authorized by the Director of SADBU.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36011

In unusual circumstances, solicitations may require that option quantities be offered at prices no higher than those for the initial quantities. Such circumstances may exist, for example, when (i) the option cannot be evaluated pursuant to 1-1504(c) or (d) because additional requirements are foreseeable but not known, and (ii) realistic competition for the option quantity is impracticable once the initial contract is awarded. However, because such limitations as to option prices tend to cause a "frontloading" of costs on the basic quantity which are transferred from the option quantity to equalize the prices offered, their improper inclusion could result in prices which are unfair to the Government should the options not be exercised. Therefore, the procedures in 1-1503(d) shall be followed.

(e) The total of the basic and option periods shall not exceed five years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for five years in the case of supplies. This 5-year limitation shall not apply to automatic data processing equipment, software, and maintenance services; however, the basic option periods shall not exceed the approved systems life as defined in 4-1102.

1-1503 Procedures.

(a) If a contract is to contain an option clause, the solicitation must contain an appropriate option provision. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option but with respect to service contracts may extend beyond the contract completion date when exercise of the option would obligate funds not available in the fiscal year in which the contract would otherwise be completed. In fixing the period within which the option may be exercised, consideration shall be given to (i) necessary lead time in order to assure continuous production and (ii) the time required for additional funding and other necessary approval action. The period specified for exercising the option shall in all cases be kept to a minimum. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented by the contracting officer in the contract file. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option.

(b) If exercise of the option would result in increased quantities of supplies, the option may be expressed in terms of (i) percentage of specific contract line items, (ii) a number of additional units of specific contract line items, or (iii) additional numbered line items identified as the option quantity with the same nomenclature as line items initially included in the contract. If exercise of the option would result in an increase in the performance of services by the contractor, the option may similarly be expressed in terms of percentages, increase in specific line items, or additional numbered line items, expressed in terms of the units of work initially used in the contract such as man hours, man years, square feet, pounds or tons handled. If exercise of the option would result in an extension of duration of the contract, the option may be expressed in terms of an extended terminal date or of an additional time period, such as days, weeks, or months.

(c) Solicitations which allow the offer of option quantities at unit prices which differ from the unit prices for the basic contract quantities shall also state that varying prices may be offered for the option quantities depending on the quantities actually ordered and the date or dates when ordered. However, if the

solicitation contains an *Evaluation of Options* provision pursuant to 1-1504, it shall also specify the price at which the options will be evaluated (*e.g.*, highest option price offered or option price for specified quantities or dates).

(d) If a solicitation is to require the offering of option quantities at prices no higher than those for the initial quantities pursuant to 1-1502(c), then:

(i) the inclusion of such limitation as to option price shall be justified and documented by the contracting officer in the contract file;

(ii) the solicitation shall also include a conspicuous notice adjacent to such limitation as to option price cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; and

(iii) if the option is for additional quantities of supplies, an option quantity shall not exceed 50% of the initial quantity of the same contract line item or of the line item with the same nomenclature; *provided*, however, that in unusual circumstances a greater percentage of quantity may be approved in writing by the Chief of the Purchasing Office.

(e) When it is anticipated that the Government may exercise an option to fulfill Foreign Military Sales requirements, the solicitation shall notify contractors of the Government's intent in this regard and shall identify the Foreign Military Sales requirements. The contract shall contain an additional paragraph in the option provision substantially as set forth in 7-104.27(d) which provides for the Government's right to exercise the option for Foreign Military Sales purposes (see 6-1309).

1-1504 Evaluation.

(a) Except as otherwise provided in this paragraph, solicitations containing option provisions shall state that evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity.

(b) If it is anticipated that the Government may exercise the option at time of award, the solicitation shall include an *Evaluation of Options* provision substantially as set forth in 7-2003.11(a).

(c) The option quantity may be considered in the evaluation for award of a firm fixed-price contract, a fixed-price contract with economic price adjustment provisions, or such other types of contracts as may be approved by Departmental procedures, if, before issuance of the solicitation, it has been determined by the Chief of the Purchasing Office that:

(i) there is a known requirement which exceeds the basic quantity to be awarded, but either (A) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, or (B) due to the unavailability of funds, the option cannot be exercised at the time of award of the basic quantity; *provided* that in this latter case there is reasonable certainty that funds will be available thereafter to permit exercise of the option; and

(ii) realistic competition for the option quantity is impracticable once the initial contract is awarded and hence it is in the best interests of the Government to evaluate options in order to eliminate the possi-

Part 6—Small Purchase and Other Simplified Purchase Procedures

3-600 Scope of Part. This Part sets forth simplified procedures for the procurement of supplies, nonpersonal services, and construction, the aggregate amount of which does not exceed $10,000, which are referred to in this Part as "small purchases." It also applies to certain other supplies and services. This Part does not preclude the use of bilateral purchase orders (see 3-608.4); Standard Form 19 for construction contracts (see 16-402.2 and 18-302); or a negotiated two-party formal contract for procurements not in excess of $10,000, for example where the procurement is classified or requires specific contract provision relating to technical inspection or test, specification changes, Government-furnished property, insurance, patents, price adjustments, or the like. When the total cost of services to repair Government equipment does not exceed $10,000, such services may be obtained by purchase orders or other appropriate small purchase method, regardless of the value of the Government equipment being repaired (see 3-608.2(b)(1)(viii)), except as provided in 3-608.2(b)(2). Procurements of supplies and services or construction initially estimated to exceed $10,000 shall not be made by the small purchase method, even though resulting awards do not exceed such amounts.

3-601 Purpose. The objective of the simplified purchase methods prescribed herein is to reduce administrative costs.

3-602 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) *Bulk funding concept* means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

(b) *Mail indicia* means the official printed markings substituted for stamps, *i.e.*, "Postage and Fees Paid" and appropriate department. This includes such markings on envelopes, cards, labels, wrappers, or tags.

(c) *Local delivery* means the movement of supplies or commodities wholly within a recognized metropolitan area in which both the point of pickup and the point of delivery are located.

3-603 Policy.

3-603.1 *General.*

(a) All purchases covered by this Part shall be accomplished by negotiation and shall cite the appropriate subparagraph of 10 U.S.C. 2304(a) in accordance with Part 2 of this Section. Such purchases shall be made only when requirements cannot be satisfied by procurement in accordance with Section V. The contracting officer shall use the purchase method covered by this Part which he determines to be most suitable to the immediate requirement and most efficient and economical. Simplified procedures may be used in procurements from Government established sources, if authorized by the basic contract or concurred in by the source.

(b) Requirements aggregating more than $10,000 shall not be broken down into several purchases which are less than $10,000 merely for the purpose of permitting negotiation under the small purchase procedures authorized by this Part. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on "all or none" basis. In such cases, suppliers shall be advised of this award procedure when quotations are requested.

(c) The "bulk funding" concept shall be used to the maximum extent practicable to reduce processing delays, double handling, and documentation. Bulk funding is particularly appropriate when numerous purchases using the same type of funds are to be made during a given period.

(d) Installation or activity transportation facilities may be used for delivery from local suppliers to the purchasing installation only after consideration of the following methods:

(i) supplier delivery;
(ii) common carrier;
(iii) parcel post; and
(iv) mail indicia.

(e) Inspection procedures for small purchases shall be in accordance with 14-308.

(f) The use of United States-owned foreign currency in making payments for small purchases shall be in accordance with Section VI, Part 11.

(g) Each acquisition of supplies and services which has an anticipated value not in excess of $10,000 and which is subject to the small purchase procedures set forth in this part is a small business-small purchase set-aside (1-702(c)) unless the contracting officer (i) determines there is no reasonable expectation of obtaining two or more quotations for purchases in excess of $500 or at least one quotation for purchases not in excess of $500; or (ii) is unable to obtain quotations(s) that are, in either case, competitive with market prices in the industry and competitive in terms of quality and delivery as outlined in 3-604. In the event that the small business-small purchase set-aside is dissolved in accordance with (g)(ii), new quotes shall be solicited on an unrestricted basis. In automated contracting systems, all proposed acquisitions pursuant to small purchase procedures will be screened for reservation in accordance with the criteria in this paragraph. When source lists are maintained for acquisitions not exceeding $10,000, these source lists shall include all known small business concerns. The names of such concerns shall be obtained from the activity Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns. Foreign concerns shall not be solicited nor awarded acquisitions reserved for small business concerns.

(h) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 6-001 and 6-1043.1(a)) is not required unless determined to be in the best interests of the Government.

mand utilizing the blanket purchase agreement shall conduct the necessary review. In addition, the contracting office which entered into the blanket purchase agreement shall also review and update, as required, each blanket purchase agreement at least annually.

3-606 Fast Payment Procedure.

3-606.1 *General.* The fast payment procedure is designed to reduce lead time to consignees and to improve supplier relations by expediting payment for small purchases. The procedure provides for payment for supplies based on the contractor's submission of an invoice which constitutes a representation that the supplies have been delivered to a post office, common carrier or point of first receipt by the Government, and that the contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements. Consignees shall notify the contracting office as soon as possible of supplies not received, damaged in transit, or not conforming to specifications of the purchase order.

3-606.2 *Conditions for Use.* When the conditions set forth below are present, the fast payment procedure should be used to the maximum extent possible, provided such use is consistent with the other conditions of the purchase. Use of the fast payment procedure would not be indicated, for example, in small purchases by posts, camps, and stations when material being purchased is destined for use at such activities and contract administration will be performed by the contracting office of such activities.

(i) Individual orders do not exceed $10,000, except that for purchases of (*a*) brand name commissary resale subsistence and (*b*) commercial type medical supplies for direct shipment overseas, the procedure may be used without limitation (see 7-104.84).

(ii) Title to the supplies will vest in the Government (A) upon delivery to a post office or common carrier for mailing or shipment to destination, or (B) upon receipt by the Government when the shipment is by means other than the post office or common carrier.

(iii) Supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

3-606.3 *Preparation and Execution of Orders.*

(a) Orders shall be issued on Order for Supplies or Services/Request for Quotations (DD Form 1155), except that calls against blanket purchase agreements shall be issued in accordance with 3-605.5. Orders may be either priced or unpriced.

(b) Purchase orders or blanket purchase agreements using fast payment procedures shall include:

(i) a requirement for the supplies to be shipped transportation or postage prepaid;

(ii) a requirement that invoices be submitted direct to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 3-608.3(c));

(iii) the following statement on consignee's copy: *Consignee's Notification to Contracting Activity of Nonreceipt, Damage, or Nonconformance.* The consignee shall notify the contracting office promptly after specified date of delivery in the purchase order, of supplies not

received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, such notification should be made not later than 60 days after specified date of delivery;

(iv) when DD Form 1155 is not used, the clause in 7-104.84(a);

(v) a requirement that outer shipping containers shall be marked "FAST PAY."

3-606.4 *Responsibility for Collection of Debts.* The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see E-602 and E-603).

3-607 Imprest Fund Method.

3-607.1 *General.* An imprest fund is a cash fund of a fixed amount established through an advance of funds, without appropriation charge, to an authorized imprest fund cashier to effect immediate cash payments of relatively small amounts for authorized purchases of supplies and nonpersonal services.

3-607.2 *Establishment of Imprest Funds.*

(a) *Authority.* Commanders of installations and of activities with purchasing authority are authorized to approve the establishment of imprest funds. The number of imprest funds at an installation shall be kept to a minimum and one imprest fund should be sufficient in most instances. Exceptions to this general rule may be justified for isolated activities when the location of the established fund is not readily accessible.

(b) *Amount of Imprest Funds.* The amount of each fund shall be established on the basis of the estimated monthly payments therefrom and the need for replenishment without undue administrative burden, but shall not exceed $5,000. A review shall be made at least quarterly to insure that the fund is not in excess of actual needs, and necessary adjustments shall be made.

(c) *Imprest Fund Cashiers.*

(1) Imprest fund cashiers must be appointed by the head of an installation or activity to make authorized cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. An imprest fund cashier should be established at a convenient location on the installation or activity for the purpose of making payments to vendors or carriers, *e.g.*, in "Central Receiving." Disbursing officers and individuals responsible for originating, approving, and processing requirements are not eligible for appointment as imprest fund cashiers. Exceptions to this rule may be granted by the major headquarters exercising control over the installation or activity. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) Each appointment and termination of appointment shall be approved by the head of the installation or activity. After approval, administrative orders signed by the appropriate authority shall be issued. Appointment orders shall contain the following:

(i) name of individual and duty station;

(ii) identification of disbursing station for which the cashier will act, including the accounting number assigned thereto;

(iii) specific duties to be performed;

the offeror and the Government which are part of the proposal

Firm . . . . . .
Name .
Title
Date of Execution ***

(End of certificate)

* Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (*e.g.*, RFP No. . . . . .)

** The effective date shall be the date when price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete and current data

*** This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to

(b) Because the certificate pertains to "cost or pricing data," it does not make representations as to the accuracy of the contractor's judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the contractor's judgment is based. This distinction between fact and judgment should be clearly understood.

(c) Whenever a Certificate of Current Cost or Pricing Data is required, the applicable clause in 7-104.29 shall be included in the contract.

(d) Although Cost or Pricing Data were requested in the solicitation, a Certificate of Current Cost or Pricing Data shall not be requested in connection with the award of any contract of any dollar value where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used, does not require re-certification.

(f) Negotiated final pricing actions such as total final price agreements under fixed price incentive and redeterminable contracts, final overhead rate settlements under cost type contracts, or partial termination settlement agreements under any type of contract are contract modifications for which certified cost or pricing data are required. A certificate shall be submitted as soon as practicable after agreement is reached on the amount of the modification. That certificate is required when the amount of the total final price agreement exceeds $100,000 or partial termination settlement agreement plus the estimate to complete exceeds $100,000.

(g) A Certificate of Current Cost or Pricing Data is not a substitute for examination and analysis of the contractor's proposal.

(h) Data supplied during negotiation of an advance agreement and FPRA's (see 15-107 and 3-807.8) will not be certified at the time of agreement. When an advance agreement is used in partial support of a later contractual action which does require certification, the price proposal certificate will cover both the data

originally supplied to support the advance agreement referenced on the DD Form 633 and all data required to update the specific price proposal data to the time of agreement on the contract price.

3-807.7 *Adequate Price Competition, Catalog or Market Prices and Prices Set by Law or Regulation.* For the purpose of paragraphs 3-807 and 15-205.22(e), the terms "adequate price competition", "established catalog or market prices of commercial items sold in substantial quantities to the general public", and "prices set by law or regulations" shall be construed in accordance with the following general guidelines.

(a) *Adequate Price Competition.*

(1) Price competition exists if offers are solicited and (i) at least two responsible offerors, (ii) who can satisfy the requirements, (iii) independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price, (iv) by submitting priced offers responsive to the expressed requirements of the solicitation. Whether there is price competition for a given procurement is a matter of judgment to be based on evaluation of whether each of the foregoing conditions is satisfied. Generally, in making this judgment, the smaller the number of offerors, the greater the need for close evaluation.

(2) If the foregoing conditions (i) through (iv) are met, price competition shall be presumed to be "adequate" unless it is determined that:

(i) the solicitation was made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(ii) the low competitor has such a determinative advantage over the other competitors that he is practically immune to the stimulus of competition in proposing a price (*e.g.*, a determinative advantage because substantial costs, such as start up or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position); or

(iii) the lowest final price is not reasonable and this finding is supported by an enumeration of the facts upon which it is based; *provided*, that such finding is approved at a level above the contracting officer.

(3) A price is "based on" adequate price competition if it results directly from such competition or, if price analysis (not cost analysis) shows clearly that the price is reasonable in comparison with current or recent prices for the same or substantially the same items procured in comparable quantities under contracts awarded as a result of adequate price competition (*e.g.*, (i) exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with 1-1505(d) and (ii) an item normally is procured competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition).

(4) Prices based on adequate price competition exempt offerors from the requirements for submission and certification of cost or pricing data. (*But see 3-1200 for CAS requirements.*)

Part 11-Acquisition of Automatic Data Processing Equipment

3-1100 Contractor Acquisition of Automatic Data Processing Equipment (ADPE).

3-1100.1 *General.*

(a) This paragraph 3-1100 is applicable to all ADPE, as defined in 4-1102.1, except as components of end items to be delivered to the Government.

(b) If ADPE is purchased for the account of the Government or if title to the ADPE will pass to the Government, the acquisition must be approved as required by Section XIII.

3-1100.2 *Review of Decision To Lease.*

(a) If the total cost of leasing the ADPE is to be allocated to one or more Government contracts requiring the negotiation or determination of costs, the contracting officer shall, prior to approval of the proposed lease agreement:

(i) require the contractor to submit a request for leasing ADPE in writing. Such request shall be in accordance with 3-1100.3;

(ii) survey the Defense Supply Agency (DSAH-LSR) for availability of excess ADPE which could be issued as GFP (see 13-301) and which would fulfill the contractor's requirements (including timely availability and technical compatibility);

(iii) determine whether, under 15-205.48, leasing is the appropriate method of acquisition from the Government's standpoint;

(iv) consider whether the ADPE should be leased under a Federal Supply Schedule Contract (see Section V, Part 9);

(v) if the rental of ADPE through a commercial contract is authorized, require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase or other benefits earned through rental payments; and

(vi) obtain approval of the ADPE leasing arrangement as provided by 4-1104.13(a)(2).

(b) If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total cost is to be allocated to Government contracts requiring the negotiation or determination of costs, the administrative contracting officer should arrange for:

(i) an initial review and an annual review thereafter of the contractor's ADPE system for the purpose of evaluating, under 15-205.48, his existing ADPE capability and the need to continue leasing, irrespective of whether the term of the lease was renewed or otherwise extended by the contractor (see 3-1100.3 for documentation required; and

(ii) submission by the contractor to the ACO of any proposed lease of a new ADPE system and any proposed major changes to an existing system, for advance determination of the validity of the stated requirement and the reasonableness of leasing and resulting cost. (See 3-1100.3 for documentation required.)

(A "*major change*" is any addition or substitution of ADPE which will have an annual cost in excess of $50,000.) After the initial review and after each annual review, and also after review of any proposed lease of a new ADPE system or major change, the ACO should either enter into an advance understanding with the contractor pursuant to 15-107, to provide a basis for concurrence in the proposed lease, or in the alternative notify the contractor of the Government's nonconcurrence and of consequent cost disallowance contemplated under 15-205.48. The Government shall approve or disapprove submissions of contractor data in a timely manner.

(c) In implementing the above, technical ADP assistance will be provided as necessary to the contracting officer by the Department having the preponderance of interest with the contractor.

3-1100.3 *Contractor Documentation for ADPE Acquisition.*

The documentation specified by this section is required only when the total cost of leasing is to be reimbursed under one or more Government contracts or the total annual cost of leasing exceeds $500,000 and 50 percent or more is charged to Government contracts. The documentation is acceptable in the same format used by the contractor to make ADPE decisions. When the documentation has previously been submitted to DCAA, a copy of that submission may be used or, if it is voluminous, reference to the submission is acceptable. Documentation previously submitted does not have to be resubmitted; only updated as necessary. The contractor's request for approval of a proposed lease agreement or to justify his leasing decisions under 15-205.48(d)(3) shall, as a minimum, consist of the following supporting data, prepared prior to acquisition.

(1) Inventory and analysis of utilization of existing installed ADPE:

a. List each computer component by manufacturer, type, and model number.

b. Give location of ADP system.

c. Furnish acceptance date(s) by component.

d. Give type of ownership, i.e., leased, purchased, Government-furnished, lease back.

e. Furnish operational use by component for the past 12 calendar months. Also show nonproductive use separated into categories: preventive maintenance and remedial maintenance for the Central Processing Unit components which affect the ADPE system for the same period.

f. Identify and describe each data system supported; indicate computer time for each system and the related contract(s) or task(s) involved.

Part 10—RESERVED

This Part reserved pending approval of a test of the Short Form Research Contract (SFRC). (See Item XVI, DAC #76-27, dated 15 May 1981.

Part 11—Automatic Data Processing (ADP) Contracting

4-1100 Scope of Part. This Part sets forth policies and procedures for the contracting by the Department of Defense of automatic data processing equipment, software, maintenance services, certain other contractual ADP support services, and supplies as defined in 4-1102. In addition, 4-1104.13(c) identifies policies and procedures related to reporting requirements for excess ADP equipment in the possession of contractors.

4-1101 Policy.

(a) Public Law 89-306, 40 USC 759, authorizes and directs the Administrator of General Services to provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment (ADPE) by Federal agencies subject to fiscal and policy control of the Office of Management and Budget (OMB). The statute specifically provides that the authority conferred upon the Administrator of General Services shall not be construed as to impair or interfere with the determination by agencies of their individual requirements or the use made of ADPE or components thereof by any agency. Under this authority, the General Services Administration (GSA) has promulgated regulations pertaining to the availability of Federal sharing and reutilization of ADP resources, and for the contracting for Government-wide automatic data processing equipment, software, maintenance services and supplies.

(b) The OSD and Departments, in turn, have issued regulations regarding the selection, acquisition, and reutilization of requirements for ADP equipment, software, maintenance services, certain other contractual ADP support services, and supplies. These regulations establish the selection and acquisition approvals that are required before contracting actions can be initiated.

(c) The GSA authority set forth in 4-1101(a) does not extend to--

(1) ADP equipment, specifically designed (not configured) and/or physically incorporated as a part of a tactical weapon or space system.

(2) Items especially designed or manufactured for the Government under a development contract.

(3) Software specifically developed for (1) and (2) above.

(4) Contractor-acquired ADP items unless:
(i) leased and full lease costs are paid by the Government under one or more ADP service contracts, or
(ii) purchased by an ADP service contractor for the account of the Government or for which title will pass to the Government.

(5) Any contractual ADP support services as defined in 4-1102.

(d) In addition, the GSA has established through regulation, blanket delegations of authority, as set forth in 4-1103.1(b), for DoD to contract for ADP. These blanket delegations of authority do not require an agency procurement request (APR) (see 4-1102.3) or a specific GSA delegation of procurement authority (DPA) (see 4-1102.7).

4-1102 Definitions. The following definitions apply only to the contracting for automatic data processing equipment, software, maintenance services, contractual ADP support services and supplies for the DoD as set forth in this Part and elsewhere in the DAR.

4-1102.1 *Automatic Data Processing Equipment (ADPE).* General purpose, commercially available, mass-produced automatic data processing components and the equipment systems created from them, regardless of use, size, capacity or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed (rather than configured) for any specific application. This definition includes:

(a) Digital, analog, or hybrid computer equipment; and/or

(b) Auxiliary or accessorial equipment such as plotters, communications terminals, tape cleaners, tape testers, data conversion equipment, source data automation recording equipment (optical character recognition devices, paper tape typewriters, magnetic tape cartridge typewriters, and other data acquisition devices), etc., to be used in support of digital, analog, or hybrid computer equipment either cable connected, wire connected, or self-standing, and whether selected or acquired with a computer or separately; and/or

(c) Punched card accounting machines (PCAM) used in conjunction with or independently of digital, analog, or hybrid computers.

4-1102.2 *Contractual ADP Support Services.* All services excluding hardware maintenance, timesharing services and systems software support, but including systems analysis, programming, software and/or data conversion, service bureau, teleprocessing, and other nonpersonal services.

4-1102.3 *Agency Procurement Request (APR).* A request by a DoD Component for GSA to contract for ADPE, software, or maintenance services, or for GSA to delegate the authority to contract for these items. It includes the applicable Request for Proposals (RFP), Invitation for Bids (IFB), or Request for Quotations (RFQ), and amendments thereto, and other pertinent information regarding the proposed contract. When the APR is submitted before preparation of the solicitation, the data systems specifications and/or the equipment performance requirements, as available, and the attendant software requirements may be provided in lieu of the RFP, IFB, or RFQ. In such instances, the software requirements shall include the software as defined in 4-1102.14 below, software in the public domain, and any additional software. However, applications programs to be developed either in-house or by contract shall not be included in the APR.

4-1102.4 *Reserved.*

4-1102.5 *Competitive Contracting.* Competitive contracting means that the Government's requirements are set forth in the form of data systems specifications or equipment performance requirements, a combination thereof, or other unrestrictive specifications which allow full competition and are devoid of bias toward either a specific product or a specific offeror.

4-1102.6 *Data Systems Specifications.*

(a) The delineation of the objectives which the system is intended to accomplish; and

(b) The data processing requirements underlying that accomplishment. The latter includes a description of the data output and its intended uses, the data input, the data files, and record content, the volumes of data, the processing frequencies, timing, and such other facts as may be necessary to provide for a full description of the system.

4-1102.7 *Delegation of Procurement Authority (DPA).* A written notification from GSA to a DoD Component granting authority to contract for ADPE, software, or maintenenace services beyond the thresholds established in 4-1103.1(b).

4-1102.8 *Desirable Features.* Those contractual conditions and technical specifications which are established by the Government but which do not have to be offered in order to be responsive to the specific solicitation. When set forth in a solicitation, the desirable features, individually or collectively, may be offered at the discretion of the offeror.

4-1102.9 *Equipment Performance Requirements.* A statement of those hardware factors such as cycle time, computing speed, tape read or write speed, printer speed, size of memory, expandability (modularity), and related software, which are a measure of the operating capability of equipment and which, when applied to the data systems specifications, provide a measure of the operating time required to process the applications involved in that equipment.

4-1102.10 *Lowest Overall Cost.* The least expenditure of funds over the systems or items life, price and other factors considered. Lowest overall cost shall include but shall not be limited to such elements as personnel, purchase price or rental, maintenance, site preparation and installation, programming, training, and telecommunications, as applicable.

4-1102.11 *Maintenance Services.* Those examination, testing, repair, or part replacement functions performed to:

(a) Reduce the probability of ADPE malfunction (commonly referred to as "preventive maintenance");

(b) Restore a component of ADPE which is not functioning properly to its proper operating status (commonly referred to as "remedial maintenance"); and

(c) Modify the ADPE in a minor way (commonly referred to as "field engineering change" or "field modifications").

4-1102.12 *Mandatory Requirements.* Those contractual conditions and technical specifications which are established by the Government as being the minimum requirements for the Government. When set forth in a solicitation, the mandatory requirements must be met by an offer in order for such offer to be considered responsive to the solicitation.

4-1102.13 *Noncompetitive Procurement.* A noncompetitive procurement ("sole source procurement") means that the Government's requirements are set forth in the form of necessary specifications which are so restrictive that there is only one known supplier capable of satisfying the Government's requirement. Contracts based on specific make and model specifications/purchase descriptions fall in this category, notwithstanding the existence of adequate price competition.

4-1102.14 *Software.* Commercially available proprietary computer programs and routines used to extend the capabilities of ADPE. This category of software includes those software packages available in the commercial market through lease or purchase. Software packages provided by original equipment manufacturers which are separately priced from ADPE are included in this category.

4-1102.15 *Supplies.* Consumable items designed specifically for use with ADPE, such as computer tape, ribbons, punch cards, and tabulating paper.

4-1102.16 *Systems or Items Life.* A forecast or projection of the period of time which begins with the installation of the systems or items, and ends when the need for such systems or items has terminated. Systems or items life is established by the Government on the basis of requirements and is usually set forth in the solicitation. Systems or items life is not synonymous with actual life of the equipment.

4-1102.17 *Tactical Weapons Systems.* For the purpose of this Part, tactical weapons system is defined as an instrument of combat, either offensive or defensive, used to destroy, injure or threaten the enemy. It consists of the total entity that is an instrument of combat which may incorporate in itself a complex assembly of functional parts; e.g., F-15 aircraft, FBM submarine, M60 tank, Minuteman Missile.

4-1103 Procurement Authority. This paragraph prescribes the conditions under which ADP procurement authority is vested in the General Services Administration or the Department of Defense.

4-1103.1 *General Services Administration (GSA).* The GSA has the exclusive authority to provide for the contracting for automatic data processing equipment, software, maintenance service, supplies, and certain other contractual ADP support services, as defined in 4-1102, unless the contract is within the exceptions set forth in 4-1101(c). Consequently, unless the acquisition is within such exceptions, the provisions of the GSA regulations shall apply in the event of conflict with this Part.

(a) Delegation of Procurement Authority (DPA). When a requirement exists for ADPE, software, or maintenance services, as defined in 4-1102, an Agency Procurement Request (APR) must be submitted to the GSA prior to the initiation of any contract action, unless the requirement meets the exceptions set forth below. In response to an APR, the GSA may contract or issue a DPA. For the procedures to be followed in submitting the APR, see 4-1104.1.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36619

(b) Exceptions. ADP contracts may be made without the prior approval of the GSA under the following conditions:

(1) Automatic Data Processing Equipment. Except for contracts involving the GSA ADP Fund (see 4-1104.14), excess leased ADPE or the acquisition of hardware monitors for measuring computer system performance, DoD may contract for ADPE without prior approval of GSA, *provided* that at least one of the following conditions is met.

(i) the contract will occur by placing a delivery order against an applicable GSA requirements contract;

(ii) the contract will occur by placing a delivery order against a GSA schedule contract, *provided* that:

a. the order is placed under the terms and conditions of the contract;

b. the order is within the maximum order limitation (MOL) of the applicable contract;

c. when an ADTS/ADP schedule contract is utilized, the total purchase price of the item(s) covered by the order does not exceed $300,000 (Note: Even though the item(s) are to be rented or leased, the purchase price shall be used to determine if the dollar value of the order falls within the $300,000 threshold); and

d. the requirements set forth in 4-1104.4 on the use of GSA schedule contracts for ADP are met; or

(iii) the value of the contract does not exceed:

a. $300,000 purchase price or $7,500 basic monthly rental charges for competitive procurement; or

b. $50,000 purchase price or $1,500 basic monthly rental charges for noncompetitive procurements.

(2) Software. Except for software available through the Federal Software Exchange Center (FSEC), DoD may contract for software, including software performance monitoring packages, for use with ADPE without approval of GSA or the Federal Computer Performance Evaluation and Simulation Center (FEDSIM), *provided* that at least one of the following conditions is met:

(i) the contract will occur by placing a delivery order against an applicable GSA requirements contract;

(ii) the contract will occur by placing a delivery order against an applicable nonmandatory ADTS/ADP Schedule contract under the terms and conditions of that contract;

(iii) the total value of the contract for the specific software package(s) does not exceed $10,000 annual lease charges, excluding maintenance, or $10,000 purchase price; or

(iv) the software is provided by the original equipment manufacturer and is not separately priced from the ADPE.

(3) Maintenance Services. The DoD may contract for maintenance services without approval of GSA when:

(i) such services are available from a nonmandatory ADTS/ADP Schedule contract under the terms and conditions of that contract; or

(ii) the maintenance charges do not exceed $100,000 annually for a fully competitive procurement, or $50,000 annually for a sole source procurement.

4-1103.2 *Department of Defense (DoD).* The DoD has authority to contract for ADPE, software, maintenance services, supplies, and certain other contractual ADP support services covered in 4-1101(c)(1) through (5). Additionally, the DoD has the authority to obtain ADP resources outside the scope of definitions provided in 4-1102.

4-1104 Contracting Procedures. This paragraph sets forth the procedures for performing ADP contracting when procurement authority is vested in the GSA. Prior to issuance of the solicitation, the contracting officer shall insure that the delegation of procurement authority has been obtained.

4-1104.1 *General.*

(a) Contracts requiring GSA approval shall be initiated by the submission of 4 copies of the agency procurement request (APR) and other applicable documents to the General Services Administration (CDS), Washington, D. C. 20405. The APR shall contain the name and telephone number of an individual within the DoD component who shall act as the point of contact with GSA. The APR shall include:

(1) Copies of the proposed solicitation, if available. If the solicitation document is not available, the specifications of the ADPE configuration that is to be acquired shall be included. The description should reflect the estimated number of central processing units, storage devices and controllers, terminals, other peripheral devices and communications devices.

(2) Estimated dollar value of the contract.

(3) Estimated system or item life.

(4) Location (city and state) of the data processing facilities involved.

(5) Fiscal quarter during which the solicitation is expected to be released to industry for contract action.

(6) Unique software, maintenance and support requirements, if any.

(7) A statement or other evidence which indicates that a performance evaluation has been made of currently installed ADP system(s), when applicable, to ensure that the proposed contract represents the lowest overall cost alternative for meeting the agency's data processing needs.

(8) Evidence that site construction/modification is, or is not, required. One of the following statements shall be used for this purpose:

(i) *The acquisition of this equipment will not require site construction or modification by GSA;* or

(ii) *The acquisition of this equipment will require construction or modification by GSA which must be completed by (date).*

(9) A statement that the need to acquire ADPE or ADP systems has been documented as required by Federal Property Management Regulations 101-35.2.

(10) A statement that ADP resources available from the sharing and reutilization programs have been screened and no ADP resources are available to satisfy the user's requirements.

(11) A justification, if applicable, to support either a contemplated noncompetitive acquisition or use of a specific make and model purchase description. This justification must address:

(i) the intended use or application of the equipment;

(ii) the critical installation schedule(s) or unique features and/or mandatory requirements, dictated by the intended use, that limit the acquisition to one source of supply or a specific make and model (the overriding necessity of these competition-limiting requirements shall be clearly identified);

(iii) the fact that no other known or probable source of supply exists for the required equipment, if a sole source procurement is contemplated (the justification also shall elaborate on the steps taken which led to this conclusion);

(iv) the existence of patent, copyright, or other limitations; and

(v) the practical factors which preclude the development of specifications and/or the requirement for competition.

(12) The ADP and Telecommunications Requirements checklist as prescribed by OSD and Department regulations.

(b) In response to an APR, GSA will either:

(1) Delegate to the DoD authority to contract;

(2) Delegate to the DoD the authority to contract and provide for GSA participation in the contracting to the extent deemed necessary under the circumstances; or

(3) Provide for the contracting by GSA, or otherwise obtain the requirement on behalf of the DoD.

(c) A copy of the APR and the GSA response shall be made a part of the contract file.

(d) When the DoD is authorized to contract for ADPE, software, ADPE maintenance services, and certain other contractual ADP support services, 2 copies of the solicitation and any subsequent amendments thereto that change the specifications, evaluation criteria, or installation date, shall be forwarded to the

General Services Administration (CDS), Washington, D. C. 20405 as soon as available, but in no event shall the documents arrive later than 8 workdays before the proposed date of issuance to industry. GSA will notify DoD of the date of receipt of the solicitation as soon as it is received. However, if timely issuance of the solicitation is critical to the DoD component mission accomplishments, copies of the solicitation may be forwarded to GSA concurrently with issuance to the industry, provided the specifications have been previously reviewed by industry and the resultant comments evaluated. Amendments to all solicitations which are clearly administrative in nature, or are for clarification purposes, need not be forwarded to GSA until the dates the amendments are sent to industry. In addition, one copy of all contracts and subsequent modifications thereto shall be forwarded to GSA when they are issued. Also, a list of commercial prices shall be forwarded for each separately identified and priced component, special feature, and software package included in the contract that is not listed on an ADP Schedule contract of the vendor selected.

(e) When GSA acquires ADPE or related items for DoD, the contracting is a joint endeavor. In this case DoD shall:

(1) Submit documentation to include the DoD requirements, systems or items life, the technical specification, and justification to support negotiated contracting;

(2) Prepare the technical portion of the solicitation and define any unique requirements;

(3) Provide necessary technical personnel (and contracting personnel, if desired) as members of the contract negotiating team;

(4) Prepare a selection plan and submit it to the GSA contracting officer prior to issuance of the solicitation;

(5) Evaluate proposals from a technical point of view and arrange for offerors' oral presentations, when appropriate;

(6) Provide copies of correspondence to the GSA contracting officer when authorized to communicate directly with offerors;

(7) Determine the technical capability of the items offered to meet the requiring activity's requirements, technical specifications, and systems or items life. This responsibility shall include the determination of whether proposals are technically acceptable or unacceptable. The results of these determinations shall be transmitted to the GSA contracting officer to enable the contracting officer to take appropriate action with the offerors;

(8) Select the lowest overall cost item(s) and transmit this information with the necessary supporting documentation to the GSA contracting officer. In the event a conclusive judgment cannot be made on the basis of lowest overall cost, a determination and findings to this effect shall be prepared before any other factors are used as a basis for selection;

(9) Provide the following administrative information to the GSA contracting officer along with the data required in (8) above:

(i) finance data (e.g., paying office, and fund citation);

(ii) contract distribution list and addresses; and

(iii) identity of assigned contracting officer within the requiring activity;

(10) Assist the GSA contracting officer in debriefing offerors, when debriefings are requested;

(11) If required, place the delivery order(s);

(12) Accomplish any other task not included above which will further the joint contracting objective or expedite completion of the contract action at the DoD's discretion and with GSA concurrence; and

(13) Administer the contract in accordance with the terms and conditions thereof.

4-1104.2 *Timesharing and Systems Software Support Services.* GSA Form 2068 (Request for ADP Services) shall be submitted for GSA timesharing and systems software support services but need not be submitted for any contractual ADP support services, as defined in 4-1102.2.

4-1104.3 *Specifications.* Data systems specifications are the preferred method for expressing the user's requirements in solicitation documents. The data systems specifications may be augmented with equipment characteristics and elements of performance when necessary to reflect the user's needs. If data systems specifications cannot be used to describe the user's complete requirement, other types set forth below may be used. However, to minimize limitations on competition, other types of specifications or purchase descriptions shall be used in the order of precedence as listed below:

(i) equipment performance requirements;

(ii) plug-to-plug compatible purchase descriptions;

(iii) brand name or equal purchase description;

(iv) specific make and model purchase description. (This type of purchase description limits competition to the extent that its use shall be deemed a noncompetitive procurement and must be justified.)

4-1104.4 *Schedule Contracts.* FSS Schedule contracts and ADTS/ADP Schedule contracts are provided by the Federal Supply Service (FSS) and the Automated Data and Telecommunications Service (ADTS), GSA, respectively.

(a) FSS/FSC Group 70 ADPE Item Schedule Contracts.

(1) A limited number of ADPE (FSC Group 70) items are available under Federal Supply Service (FSS) Schedule contracts. These items shall be contracted for in accordance with the terms and conditions of the particular contract and the applicable policies and procedures at 5-102 through 5-106. For each contract for ADPE from this source, the requirement shall be synopsized in accordance with 4-1104.6 and the contract file documented with the results of the synopsis action. If affirmative response is received (other than from FSS sources) and the FSS Schedule is used, the contract file shall be documented to include the method of acquisition; e.g., lease or purchase, with evidence that the use of the FSS Schedule is the lowest overall cost alternative, price and other factors considered. As a minimum, the other factors to be considered shall be the continued availability of spare parts and maintenance services for the ADPE items.

(2) The contract file shall also be documented with an appropriate justification for noncompetitive procurements.

(3) Use of the FSS Schedule does not waive applicable acquisition planning requirements. Necessary privacy approvals shall be obtained before acquiring ADPE from FSS Schedule contracts, when applicable.

(4) To the extent specific mandatory provisions of the pertinent FSS Schedule contract apply to the specific requirement to be ordered, the item(s) shall be contracted for in accordance with procedures applicable to the FSS Schedule contracts, notwithstanding the above.

(b) Nonmandatory ADTS/ADP Schedule Contracts. A large number of items of ADPE, software, and maintenance services are available under nonmandatory ADTS/ADP Schedule contracts, subject to the following:

(1) General. Nonmandatory ADTS/ADP Schedule contracts are not awarded on a competitive basis; therefore, competition shall be obtained unless sole source procurement is authorized. Requirements shall be synopsized in accordance with 4-1104.6; however, publication of contract award information in the Commerce Business Daily (CBD), as set forth in 1-1005, is not required when an order is placed against an ADTS/ADP Schedule contract. If ADPE, software, or maintenance services are procured under an ADP Schedule at other than lowest price available under any ADTS/ADP Schedule contract, the action shall be justified. A copy of the justification and supporting data shall be submitted to GSA if procurement was conducted under specific delegation of procurement authority. In addition, the availability of items under the ADTS/ADP Schedule contract shall not preclude or otherwise impede contracting for components, including peripheral equipment or components for augmenting an existing system from a number of different sources, if this action will be in the best interests of the Government. Suitable equipment must be considered whether or not this equipment is on an ADTS/ADP Schedule contract.

(2) Use of Nonmandatory ADTS/ADP Schedule contracts for the initial acquisition of ADPE. A delivery order may be placed against the ADTS/ADP Schedule contract under terms of the contract, *provided* that:

(i) the ordering activity has the necessary procurement authority;

(ii) the dollar value of the order does not exceed $300,000 and is within the maximum order limitation (MOL) of the applicable ADTS/ADP Schedule contract; and

(iii) the contract file is documented with the results of the synopsis action required in 4-1104.6 and evidence that use of the ADTS/ADP Schedule contract, including the method of acquisition (e.g., lease or purchase), results in the lowest overall cost to the Government, price and other

factors considered. As a minimum, the other factors to be considered shall be continued availability of maintenance services and spare parts for the ADPE item.

(3) Use of Nonmandatory ADTS/ADP Schedule contracts for the continued lease or rental of an installed central processing unit (CPU). ADTS/ADP Schedule contracts may be used for the continued lease or rental of installed equipment and software except that a specific delegation of procurement authority must be obtained from GSA before issuing an order to renew the lease of a CPU when the current price to purchase under the schedule exceeds $300,000 and when available from a source other than the ADTS/ADP Schedule contract. Requirements for continued lease of an installed CPU shall be synopsized.

(4) Use of Nonmandatory ADTS/ADP Schedule contracts for the conversion from lease to purchase of installed ADPE. A specific delegation of procurement authority pursuant to 4-1103 must be obtained from GSA before issuing an order to purchase ADPE with an aggregate list purchase price of more than $300,000 when identical; i.e., specific make and model or suitable substitute equipment is available from a source other than the schedule contracts. Requirements shall be synopsized. The contract file shall be documented with an appropriate justification when ADPE item is contracted for on a noncompetitive basis.

(5) When alternate sources of supply are not expected to be available, the synopsis may be in the form of a notice to contract, without developing a solicitation package and due date. If no affirmative responses are received from potential offerors by the due date for responses to the notice, the contract file shall be so documented and no further use of the CBD is required. If affirmative responses (other than sources available under the ADTS/ADP Schedule contract) are received, and it is determined that the use of the ADTS/ADP Schedule contract is in the best interest of the Government, further synopsizing of the contract action is not required.

4-1104.5 *Requirements Contracts.* GSA makes selected ADPE and software available through requirements contracts. When ADPE and software which satisfy requirements are available from GSA requirements contracts, this source shall be the primary source of supply in accordance with the provisions of the contracts. Copies of the contracts are distributed to recipients of the ADTS/ADP Schedule for FSC Group 70, Part 1. Additional copies are available from the

General Services Administration, 8BRC, Building 41, Denver Federal Center, Denver, Colorado 80225. Some of these requirements contracts specify that GSA is responsible for the allocation of ADPE or software. In these cases, authorization shall be obtained from GSA (CDP), Washington, D. C. 20405, before placing an order. ADPE or software which is functionally similar to that on a requirements contract shall not be acquired from another source until the activity (i) documents the contract file as to why the requirements contract could not be used, and (ii) obtains a delegation of procurement authority from GSA, unless the contract falls within the exceptions noted under 4-1103.1(b).

4-1104.6 *Publicizing Contract Actions.*

(a) To ensure that appropriate competition is obtained, synopses of proposed contracts for ADPE, software, and maintenance services shall be publicized in the Commerce Business Daily (CBD) in accordance with the provisions of Section I, Part 10. Notwithstanding exception under 1-1003.1(c)(v), a requirement which may result in an order against an ADTS/ADP Schedule contract shall be synopsized when ADPE requirements referred to in 4-1104.4(b) exceed $35,000. Synopsis is not required when placing orders against ADTS/ADP Schedule contracts in any amount, for maintenance services and software. However, the existence of an ADTS/ADP Schedule contract shall not preclude or waive the requirement for maximum practicable competition in obtaining ADPE maintenance and software.

(b) The GSA centralized Bidders Mailing List (BML) for Federal Supply Classification (FSC) Group 70 shall be used for competitive ADPE and software and ADPE maintenance service procurements over $50,000. Each addressee on the BML must be informed that he must request, in writing, copies of the solicitation if he desires to compete. DoD Components shall obtain the GSA BML by a written request to the General Services Administration (8FSS), Building 41, Denver Federal Center, Denver, Colorado 80225. The request shall include the applicable class and BML code number(s), listed below:

7010-0001	ADPE Configuration
7020-0001	ADP Central Processing Unit (CPU, Computer), Analog
7021-0001	ADP Central Processing Unit (CPU, Computer), Digital
7022-0001	ADP Central Processing Unit (CPU, Computer), Hybrid
7025-0001	Memory-Magnetic Storage

7025-0002	Magnetic Tape Subsystems
7025-0003	Magnetic Disk Subsystems
7025-0004	Printers, High Speed (ADP)
7025-0005	Paper Tape Devices
7025-0007	Interactive Display
7025-0008	Interactive Graphics
7025-0009	Interactive Hard Copy
7025-0010	Other ADP Input/Output and Storage Devices
7030-0001	Operating System
7030-0002	Application Programs
7030-0003	Data Base Management Programs
7030-0004	Other Software
7035-0001	ADP Accessorial Equipment
7040-0001	Punched Card Equipment
7045-0002	ADP Support Equipment
7050-0001	ADP Components

The GSA BML may be used for subsequent contracting for items in the class and BML code, *provided* the solicitation is released to industry within 90 days following receipt of the BML in question.

(c) FPR Section 1-4.1107-3(b) shall be cited as the authority for the request. For further information concerning the above classes, DoD Components should contact General Services Administration (CDP), Washington, D. C. 20405.

(d) To contract for ADP maintenance services, agencies shall obtain the GSA maintenance BML by written request to the Office of Customer Service and Support, GSA location which serves the requesting activity. FPR 1-4.1107-3(d) shall be cited as the authority for requesting this BML.

(e) Copies of the complete solicitation shall be forwarded to all known active bidders and those who respond affirmatively as a result of paragraphs (a), (b), and (d) above.

4-1104.7 *Restrictions on the Use of Simulation in the ADPE Contracting Process.* The restrictions on the use of computer system simulation for ADPE contracting are set forth below.

(a) A simulation input definition format shall not be used as the only means of describing data processing requirements in solicitation documents. Any such format shall be accompanied by a narrative description of the ADP objectives and workload and any available application logic diagrams.

(b) Solicitations shall not be structured in such a way as to require offerors to use a specific computer system simulator in order to offer, but where offerors submit computer simulation as part of the offer, they shall be required to describe clearly the simulation used and the make and model of the computer on which the simulation was run.

(c) Offers shall not be considered to be nonresponsive or unacceptable solely on the basis of simulation results.

4-1104.8 *Software Contracts.* The contracting for computer software shall be consistent with Section IX, Parts 2, 5, and 6. In addition, contracting officers shall strive to:

(i) avoid restrictive clauses that limit the use of the software to a specific system, installation or organization;

(ii) incorporate a clause that will permit other Government agencies to obtain the software under the contract being negotiated;

(iii) obtain additional quantity discounts, should any other Government agency acquire the same software under the contract in question; and

(iv) ensure that the vendor is contractually obligated to support and maintain the software in subsequent years.

4-1104.9 *Contracting for ADP Supplies.* ADP supplies as defined in 4-1102 shall be contracted for in accordance with the following procedures.

(a) EDP tape and instrumentation tape—The provisions of 5-102 apply.

(b) Tabulating machine cards—The provisions of 5-102 apply.

(c) Marginally punched continuous forms—The provisions of 5-601 apply.

(d) Other ADP supplies—The provisions of 5-102 and 5-103 apply in the event the supplies are included in mandatory or nonmandatory Federal Supply Schedules.

4-1104.10 *Methods of Acquisition and Evaluation of ADPE.*

(a) Methods of Acquisition. The method chosen for a given ADPE acquisition shall be that which offers the greatest advantage to the Government, subject to the type of funds available and other circumstances which pertain to each situation. A lease-purchase analysis shall be made and documented to support the selected method of acquisition. Maximum use shall be made of the following four methods of acquisition.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36625

(1) Purchase.

(2) Lease: Vendor retains title to the equipment throughout the systems life.

(3) Lease with Option to Purchase (LWOP): A method of acquisition whereby the Government leases the ADPE with options to purchase.

(4) Lease to Ownership Plan (LTOP): A method whereby title to ADPE transfers to the Government after payment of rental over a specified period in accordance with applicable funding statutes.

(b) Evaluation Factors.

(1) To enable an offerer to prepare a proposal or quotation, the solicitation shall contain all the evaluation factors that are to be considered. In addition to the mandatory requirements, desirable features shall be included where applicable. When desirable features are included in a solicitation, their value to the Government shall be expressed in dollars as an evaluation factor.

(2) Conversion rental credits (those credits proposed by a contractor for the reduction or termination of monthly lease charges for equipment already installed but which is to be replaced) applicable to installed ADPE during the period of conversion to new equipment, when parallel systems are in operation, shall not be considered as an evaluation factor in the contracting for ADPE. Conversion rental credits are not the same as, and should not be confused with, purchase option credits (those credits which accrue to the Government under contracts awarded for lease and which contain an option to purchase). The latter, when applicable, are to be considered in the evaluation.

(3) Evaluation of offers shall be based on the systems life cost and shall, among other factors, consider the following:

(i) residual value of ADPE;
(ii) present value of money (discounted for the systems life); and
(iii) maintenance cost.

The net evaluated cost resulting from the application of all factors shall be used in determining the lowest overall cost alternative.

(c) Small Purchase. When the aggregate amount of any one requirement for ADPE, software, and maintenance services does not exceed $10,000, it shall be accomplished in accordance with Section III, Part 6, except that FSC Group 70 items which are available under FSS Schedule contracts for FSC Group 70 items will be subject to this Part 11; however, existing

mandatory ordering provisions representing contractual obligations of the Government will not be disturbed. In addition, monetary thresholds applicable to agency procurement authority are reflected in the ADTS/ADP Schedule contract provisions. The requirement for synopsizing prior to placing an order under a schedule contract applies to ADPE requirements which exceed $35,000.

4-1104.11 *Source Selection.* Proposal evaluation and source selection of ADPE, software, maintenance, and certain other contractual ADP support services shall be in accordance with OSD and Department procedures. A selection plan shall be prepared prior to issuance of the solicitation documents, and a copy shall be retained in the contract file.

4-1104.12 *Sole Source Contracting Documentation.* The following documents, clearly marked "sole source procurement," shall be forwarded to the General Services Administration (CDPSD), Washington, D. C. 20405, for each sole source acquisition of ADPE, if the dollar value involved is between $10,000 and $50,000:

(i) a copy of the contract; or
(ii) a copy of the purchase/delivery order issued against an ADTS/ADP Schedule contract.

4-1104.13 *Defense Contractors.*

(a) When either of the two conditions of 4-1101(c)(4) apply, then:

(1) Contracting proeedures of 4-1104 through 4-1104.12 apply, as supplemented herein. (When the two conditions, referred to above, do not apply, see 3-1100 and 13-301(h).)

(2) Defense contractors shall submit requests for all methods of acquisition for ADPE software, maintenance services, and supplies to the Administrative Contracting Officer for processing and approval in accordance with OSD and Department procedures.

(b) The following procedures are applicable when leased ADPE is used on Government contract work and the total cost of leased ADPE is absorbed by the Government under a cost-reimbursement type contract.

(1) The contracting officer shall require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase credits or other benefits earned through rental payments.

(2) When leased ADPE is used on Government contract work under a cost-reimbursement type contract and less than 100 percent of the cost of the equipment is absorbed by the Government, the contracting officer should obtain for the Government, when possible, the right to accrued purchase credits, if the contractor elects not to exercise his purchase option. Accordingly, negotiation objectives for cost-reimbursement type contracts shall include the following when less than 100 percent of the cost of the equipment is absorbed by the Government.

(i) the contractor should be encouraged to incorporate in his ADP equipment lease the right to assign accrued purchase credits to the Government;

(ii) the contracting officer should obtain for the Government, if possible, the right of first refusal on accrued purchase credits if the contractor elects not to exercise his purchase option; and

(iii) a 60-day advance notice should be provided to the Government when the contractor intends to terminate his ADP equipment lease if the Government has been granted rights to accrued purchase credits.

(3) If the Government has been granted rights to purchase credits in accordance with (b) above and the contractor elects not to exercise his purchase option, the ADPE shall be reported through DoD reutilization channels as provided in paragraph (c) below.

(4) If the Government elects to exercise the option to purchase ADPE leased by the contractor, the applicable provisions in this Part 11 relating to the acquisition of ADPE shall apply to the exercise of the option as if the Government was the initial lessee.

(c) Excess ADPE, software, and associated spare parts in the possession of contractors, whether leased or Government-owned, will be reported regardless of the procurement authority under which they were acquired. Accordingly, ADPE, software, and associated spare parts acquired under any of the authorities set forth in 4-1101 are subject to the reporting requirements of DAR Section XXIV and Defense ADPE Reutilization

Manual DOD 4160.19M. ADPE, software, and associated spare parts with an initial acquisition cost below $1,500 are subject to special excess screening procedures in DOD Manual 4160.19M.

4-1104.14 *ADP Fund.*

(a) The GSA ADP Fund is a revolving fund available for financing the purchase and, under certain circumstances, lease of ADP equipment and/or software. When approved by GSA, the ADP fund may be used to obtain maintenance services for ADPE leased from GSA through the ADP fund.

(b) When evaluation of offers indicates purchase as the lowest overall cost alternative, but the funds committed to the purchase are inadequate or are not of the proper type, the contracting officer shall notify the requiring or other Department-designated activity of the savings to be realized if items are purchased rather than leased. This activity, upon insuring that funds are not available, shall make an inquiry to GSA for the use of the ADP fund. If the ADP fund is not available, this activity shall notify the contracting officer that the ADP fund is not available and that the next lowest overall cost alternative should be selected.

(c) If the GSA ADP Fund is used, the activity shall negotiate and execute a payback arrangement with the GSA.

4-1104.15 *Contract Clauses.* In addition to the other clauses required by DAR, the clauses in 7-2202 shall be used in all solicitations and contracts for ADP equipment, software, maintenance services, supplies, and certain other contractual ADP support services when GSA has delegated procurement authority either by DPA or by regulation.

4-1105 Conflicts Between DAR and DPA. When contracting for ADPE, software, maintenance services, supplies, and certain other contractual ADP support services under a DPA from the GSA, the provisions of the delegation shall take precedence over any conflicting provisions of the DAR and shall not be processed as a deviation from DAR.

4-1106 Acquisition Assistance. Assistance in any phase of the contracting process covered by this Part may be obtained by contacting:

ARMY:

U.S. Army Computer Systems Selections
and Acquisition Agency
Alexandria, VA 22331

HQ DA DAAC-ZK
The Pentagon
Washington, DC 20310

NAVY:

ADP Selection Office
Washington, DC 20376

Naval Data Automation Command
Washington Navy Yard
Washington, DC 20374

AIR FORCE:

Air Force Computer Acquisition Center
Hanscom AFB, MA 01731

HQ USAF (AF/RDC)
Washington, DC 20330

DEFENSE LOGISTICS AGENCY:

DLA-PP
Cameron Station
Alexandria, VA 22314

Part 8—Procurement of Utility Services Using GSA Area Contracts

5-800 Applicability. This Part is not applicable to the procurement of utility services outside the United States.

5-801 General. The General Services Administration enters into areawide contracts with various utility suppliers for the furnishing of utility services (including electricity, natural and manufactured gas distributed by pipes, stream, sewerage, and water) to Federal agencies located within the service areas of such suppliers. GSA areawide contracts provide that the utility supplier, upon execution of a Government order in the form of an authorization prescribed by the contract, will furnish, without further negotiation, the services involved in accordance with such of the supplier's rate schedules as are applicable to such services and subject to all the provisions of the areawide contract.

5-802 Distribution of Lists and Copies of GSA Areawide Utility Contracts. Upon request, GSA will furnish to Federal agencies a list of GSA areawide public utility contracts showing in each case the kind of utility service, the serving utility, and the area served. GSA also will make available to Federal agencies, upon request, a copy of any areawide contract. Each contract includes the specimen order form authorizing service connection, disconnection, or change. Requests should be made to the Public Utilities Division, Transportation and Communications Service, General Services Administration, Washington, D.C. 20405.

5-803 Department of Defense Use of GSA Area Contracts.

(a) DoD activities in areas covered by a GSA areawide contract shall procure utility services thereunder, unless it is determined that more advantageous competing services are available; however, when it is in the best interests of the Government, DoD activities may negotiate special rates or special services under a GSA areawide contract or under a separate contract. In determining whether it is in the best interests of the Government to negotiate special rates or special services, consideration should be given to (i) the area contract rates viewed in light of the magnitude of the service required, (ii) any unusual characteristics of the service required, (iii) any special equipment or facility requirements, (iv) any special technical contract provisions required, and (v) any other special circumstances.

(b) When, pursuant to (a) above, a DoD activity determines to procure utility services under a separate contract rather than under a GSA areawide contract, the utility services shall be procured in accordance with Supplement 5 to this Regulation. Such separate contracts shall be reported, upon execution, to the Public Utilities Division, Transportation and Communications Service, General Services Administration, Washington, D.C. 20405.

5-804 Ordering Under Area Contracts. When utility services are procured under GSA area contracts, the method of ordering prescribed in the appropriate GSA Public Utility Schedule shall be used. The form prescribed for ordering may be modified to satisfy fiscal and administrative requirements of the Department concerned, and to contain such additional contract provisions as may be necessary, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034. Where GSA area contracts do not contain the Gratuities clause (7-104.16), the clause shall be included in the order form.

Part 9—Use of GSA Supply Sources by Prime Contractors

5-900 Scope. This Part prescribes policies and procedures for contracting officers regarding the use of General Services Administration (GSA) supply sources (*i.e.*, items available through Federal Supply Schedule contracts, GSA Nonmandatory ADTS/ADP Schedule contracts, GSA ADP Requirements contracts, and from GSA stock) by contractors in performing certain Government contracts. The term *contractor* as used in this Part, unless the context otherwise requires, includes subcontractors who qualify in accordance with the provisions of 5-902(b). (The use of GSA sources by grantees is not authorized.) This Part is applicable to the procurement of supplies to be delivered in the United States, its possessions, or Puerto Rico.

5-901 Policy.

(a) It is the policy of the General Services Administration to make GSA supply sources available to all eligible users in order to promote greater economy and efficiency in Government procurement programs.

(b) To the extent provided in this Part, the policy is applicable to contractors working wholly or substantially on cost-reimbursement contracts.

5-902 Authorization to Contractors.

(a) When the contracting officer determines that it is in the best interest of the Government to do so, the Department shall authorize in writing its prime contractors and, where appropriate, their subcontractors to utilize GSA supply sources in performing Government contracts. Authorizations to subcontractors shall be issued through, and subject to the approval of, the prime contractor. Each authorization (prime or sub) shall be supported by a written finding of the facts which are the basis for the determination to issue the authorization. Such findings shall be retained in Departmental contract files.

(b) The authorization to utilize GSA supply sources may be issued only where a Department deems it advisable for a contractor to utilize GSA supply sources in performing:

(i) Government cost-reimbursement contracts; and

(ii) other types of negotiated contracts where a Department determines that a substantial dollar portion of the contractor's contracts are of a Government cost-reimbursement nature.

(c) Subject to the criteria set forth in subparagraph (b) of this paragraph 5-902, a Department may include in its written authorizations such limitations or conditions as it deems necessary in the public interest. For example, it may choose to:

(i) authorize purchases from GSA supply sources of any overhead supplies, but no production supplies; or

(ii) limit any authorization requirement to use GSA sources to a specific dollar amount, leaving the contractor free to make smaller purchases from any source he chooses; or

(iii) restrict the authorization to certain plants or facilities or to specific contracts.

The terms and conditions which the Department may impose are not limited to the foregoing examples.

(d) In determining whether to issue such an authorization, consideration should be given, but not necessarily limited to, the following factors:

(i) the administrative cost of placing orders with Government sources, and the program impact of delay factors, if any;

(ii) lower cost of purchased items;

(iii) suitability of items available through GSA supply sources;

(iv) delivery factors such as cost and time; and

(v) recommendations of prime contractors.

(e) Each authorization issued under this Part shall:

(i) cite the number of the contract or contracts involved;

(ii) specify the Military Standard Requisitioning and Issue Procedures (MILSTRIP) and include the DoD Activity Address Code (DLAH 4140.1, AR 725-60-1, MCO P4420.2H, CG 364, AFM 75-6, NAVSUP PUB 5544) to which the authorization applies; and

(iii) whenever practicable, contain a limit upon the period of effectiveness of the authorization.

(f) The authorizing Department shall request a DoD activity address code from the service point (see Section I of Introduction to DODAAD. The request shall be in writing and shall contain the in-the-clear address(es) to which mail, freight, and billing documents are to be directed by GSA for the contractor. Address changes shall also be submitted in writing by the authorizing Department as well as deletions when contracts are terminated.

(g) The contracting officer shall be responsible for insuring that prime contractors and subcontractors comply with the terms of their authorizations and for insuring that supplies and services obtained from GSA sources of supply are properly used.

5-903 Orders Under Federal Supply Schedule Contracts, GSA Nonmandatory ADTS/ADP Schedule Contracts, and GSA ADP Requirements Contracts.

(a) Orders placed by Government contractors under Federal Supply Schedule contracts shall be placed in accordance with the provisions of the applicable Federal Supply Schedule and the authorization issued to the contractor. Each order shall be accompanied by a copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor).

(b) In the event a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor in accordance with Departmental authorization, the contracting officer shall promptly report the facts and circumstances to the General Services Administration, Federal Supply Service, Office of Customer Service and Support-FF, Washington, D. C. 20406.

(c) Orders under GSA nonmandatory ADTS/ADP Schedule contracts and GSA ADP Requirements contracts shall be placed in accordance with the provisions of the applicable contract and 4-1102.4(b) and 4-1104.5, respectively.

5-904 Orders for GSA Stock. Orders placed by Government contractors with GSA shall be placed in accordance with the authorization, using the MILSTRIP format.

5-905 Furnishing Information to Contractors. The contracting officer shall assist the contractors which they have authorized to use GSA supply sources in

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36629

obtaining pertinent Federal Supply Schedules and the GSA Supply Catalog, and shall furnish them with any other desired information. Such schedules and catalogs may be obtained by submitting a completed GSA Form 457, FSS Publications Mailing List Application, in accordance with the instructions on the form. GSA Form 457 may be obtained from the GSA regional office serving the area in which the requesting activity is located.

5-906 Form of Authorization to Contractors.

SUBJECT: Authorization to Purchase from GSA Supply Sources.
..... (Contractor's Name)
..... (Address)

1. You are hereby authorized to utilize GSA supply sources in performing Contract No. ..... for the Department of ..... as follows:

The purchasing of property for acquisition under Contract No. ..... which is available for purchase by Government agencies either directly from the General Services Administration stock or under Federal Supply Schedules, subject to the limitations set forth herein.

2. a. Purchase Orders Under Federal Supply Schedule Contracts. Orders will be placed in accordance with the terms and conditions of the attached Federal Supply Schedule and this authorization. A copy of the authorization shall be attached to the order (unless a copy was previously furnished to the Federal Supply Schedule contractor) and the order shall contain the following statement:

This order is placed pursuant to written authorization dated ....., (*.....). In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

b. Requirement for Items in the GSA Stock Catalog. Orders will be placed in accordance with the Military Standard Requisitioning and Issue Procedures (MILSTRIP) and this authorization. Bills are not issued by GSA until after shipment has been made and should be paid promptly. Any adjustements necessary will be made by GSA.

3. Other provisions.

4. This authority hereby granted is not transferable or assignable.

5. The DoD Activity Address Directory (DODAAD) (DLAH 4140.1, AR 725-60-1, MCO P4420.2H, CG 364, AFM 75-6, NAVSUP PUB 5544)** Activity Address Code to which this Authorization applies is ..... .

6. This authorization expires ..... .

(Contracting Officer) .....

*Insert "a copy of which is attached", or "a copy of which which you have on file", or other suitable language, as appropriate.

**The sponsoring service (see Section 1, Introduction to the DODAAD) assumes responsibility for monitoring and controlling all activity address codes utilized in the letters of authority

5-907 Payment for GSA Shipments. Bills for GSA shipments are not rendered by GSA until after shipment has been made. Receipt of billing is construed as sufficient evidence of delivery to establish Government liability and to provide a basis for payment. Accordingly, agencies should direct their contractors to make payments promptly upon receipt of billings.

5-908 Title. Title to all property acquired from GSA supply sources shall vest in either the Government or the contractor in accordance with the provisions of the "*Government Property*" clause of the contract.

5-909 Contract Clause. Insert the clause set forth in 7-204.28 in all cost-reimbursement type contracts under which the contractor may acquire supplies for the account of the Government. The last sentence of the clause shall be deleted in the case of facilities contracts.

(d) Qualifying country is any country defined in (a), (b), and (c) above.

(e) United States means the States, the District of Columbia, Puerto Rico and possessions (see 1-201.12). It does not include leased bases or trust territories.

6-001.6 Offer.

(a) Defense cooperation country offer means an offer of a defense cooperation country end product including transportation to destination.

(b) Domestic offer means an offer of a domestic end product, including transportation to destination.

(c) FMS/offset arrangement country means an offer of a FMS/offset arrangement country end product, including transportation to destination.

(d) Foreign offer means an offer that is not a domestic offer. It includes transportation to destination and duty (whether or not a duty-free entry certificate may be issued).

(e) Participating country offer means an offer of a participating country end product including transportation to destination.

(f) Qualifing country offer means an offer of a qualifying country end product including transportation to destination.

6-001.7 Concern.

(a) Domestic concern means an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this Section, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

(b) Foreign concern means a concern that is not a domestic concern.

FOREIGN ACQUISITIONS

Part 1--Buy American Act--Supply Contracts

6-100 Scope of Part. This Part implements the Buy American Act (41 U.S.C. 10a-d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to supply contracts and to services which require the furnishing of end items (e.g., leasing of equipment). The Buy American Act does not otherwise apply to the purchaser of services.

6-101 Reserved.

6-102 General.

6-102.1 Buy American Act Requirements. Except as provided in 6-103, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The Act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 6-104.4.

6-102.2 Balance of Payments Program Requirements.

(a) The 50 percent evaluation factor in favor of domestic offers, implemented in 6-104.4, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50 percent factor beyond the time when the U.S. balance of payments deficit is corrected.

(b) Although the evaluation procedures in 6-104.4 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one which precisely obtains in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see 1-109) from the evaluation procedures of 6-104.4 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Under Secretary of Defense Research and Engineering (USDRE) or his designee.

6-102.3 Acquisition From, Through, or For Other Government Agencies. In acquisitions from or through other Government agencies, responsibility for compliance with the Buy American Act and Balance of Payments Program evaluation procedures (see 6-104.4) is as follows:

(a) The General Services Administration has responsibility for compliance with the Buy American Act for foreign end items acquired by Defense activities from GSA stores depots, direct purchases for such activities, or purchases from a mandatory Federal Supply Schedule which does not include any domestic source for that item. Balance of Payments evaluation procedures are not applicable to these transactions.

FOREIGN ACQUISITIONS

Part 8--Balance of Payments Program

6-800 Scope of Part.

(a) This Part implements the Department of Defense Balance of Payments Program with respect to all acquisitions of (i) services which require the furnishing of end items (e.g., leasing of equipment) and supplies required for use outside the United States, except Petroleum and Military Assistance Program acquisitions (see Section VI, Part 7), and Foreign Military Sales (see Section VI, Part 13) and (ii) scientific and technical knowledge, resulting in dollar expenditures outside the United States and Canada. However, the exception regarding Military Assistance Program and FMS acquisitions does not apply to 6-804. Defense requirements as to the use of U.S. Flag vessels, which affect the Balance of Payments Program, are set forth in Section I, Part 14.

(b) The Balance of Payments Program is an interim measure imposed by the Department of Defense to alleviate the impact of DoD expenditures on the nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the former applies to acquisitions required for use outside the United States, and the latter applies only to acquisitions required for use in the United States. Nevertheless, it is the policy of the Department of Defense to implement the Balance of Payments Program using evaluation procedures similar to those which implement the Buy American Act (see 6-104 and 6-105).

6-801 Prohibition Against Fragmenting Acquisitions. As to those provisions of this Part which state dollar limitations below which exceptions permitting the purchase of foreign items may be made if certain conditions are satisfied, requirements aggregating more than any such limitations shall not be broken into separate purchases which are less than such limitations merely for the purpose of allowing such exceptions.

6-802 Real Property Construction, Repair and Maintenance. All projects for construction, repair, and maintenance of real property outside the United States must be approved in accordance with DoD Directive 7060.4(AR-37-43; AFR 85-6/AFM 86-1; NAVFACINST 7020.6). Contracts for such projects will require that specified U.S. materials will be used or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including transportation and handling costs) does not exceed the cost of foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in the project approval.

6-803 Supply and Applicable Service Contracts.

6-803.1 Procedure.

(a) Except as provided in 6-803.2, proposed acquisitions of supplies and applicable services for use outside the United States shall be accomplished in accordance with the evaluation procedures in (d) below.

(b) Solicitation of Offers. Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 6-803.2) is available to prospective contractors upon request. When quotations are obtained orally, vendors shall be informed that only domestic and qualified country end products shall be acceptable other than those items which have been excepted either on

a blanket or an individual basis (see 6-803.2) or the price for the nonqualifying country end item meets the evaluation criteria in (d) below. When only domestic end products are acceptable, the solicitation shall so state (e.g., see 6-104.4(d)).

(c) Reserved.

(d) Evaluation.

(1) In accordance with the Balance of Payments Program, where these procedures result in the acquisition of foreign end products, the acquisition of domestic end products is deemed unreasonable in cost or inconsistent with the public interest. Except as provided herein and in 6-104.4(d), offers shall be evaluated so as to give preference to domestic offers as follows:

a. Each nonqualifying country offer of defense equipment (but see exception in b. below) shall be adjusted for purposes of evaluation by increasing such offer by 50 percent. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In all other instances, use the tie-breaking procedures in 2-407.6.

b. In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example A below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example B below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(2) The following examples illustrate how the procedure in (1) above should be applied.

EXAMPLE A

Nonqualifying Country Offer	$6,000
Domestic Offer	8,900
Qualifying Country Offer	8,800

Award on Qualifying Country Offer. The nonqualifying country offer, adjusted by 50-percent factor is $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE B

Nonqualifying Country Offer	$6,000
Domestic Offer	9,500
Qualifying Country Offer	8,800

Award on Nonqualifying Country Offer. Nonqualifying country offer, adjusted by 50-percent factor is $9,000. It is still lower than the

6-1305.4 Applicability and Allowability of Sales Commissions or Fees.

(a) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported based on the criteria in 6-1305.4(b). If deviations to this policy are considered necessary, 1-109.3 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(b) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer, except with respect to those contracts excluded in 1-506.3(i) and (ii), shall:

(i) require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) determine under 1-505 whether a bona fide employee or agency relationship exists; (For the purposes of FMS, the definition in 1-504 of improper influence also extends to officials of the foreign government.)

(iii) require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of reasonableness for the purposes of making the statement required by 6-1305.3(a)(iii), is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(c) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 6-1305.3(a)(iii) fee statements), subject to the approval of the chief of the contracting office.

6-1305.5 Contracting Procedures Relating to Sales, Commissions and Fees.

If, after notification by DoD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by

6-1305.3, the foreign government disapproves the fee, or a portion of the fee, the contracting office shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

6-1305.6 Special Country Requests With Respect to Sales Commissions and Fees. Pursuant to DoD Manual 5105.38-M (Military Assistance and Sales Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordon, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, or Thailand are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall insert the clause in 7-104.107 in all solicitations and contracts for FMS awarded on behalf of these purchasers unless such payment has been approved.

6-1306 Recovery of Nonrecurring Costs.

6-1306.1 Policy. It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products, and/or a fair price for its contribution to the development of related technology, when such products are sold and when technology relating to the manufacture of the products is sold or licensed to a foreign government, international organization, foreign commercial firm, or domestic organization. Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under a foreign military sales case when subsequent customers purchase the same specialized feature.

6-1306.2 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(i) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(ii) Nonrecurring production costs.

(iii) RDT&E and nonrecurring production costs for special features under a foreign military sale, when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components which individually meet the above thresholds, recoupment will be made on a component when sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

will have the same access to DoD research and development program information as United States firms.

15. Supersession of Prior Arrangements:

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.

16. Effect and Duration:

This Memorandum of Understanding will remain in force indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.

Charles M. Drury
Minister of Defence Production
Date: 21 November 1963

Robert S. McNamara
Secretary of Defense
Date: 16 November 1963

6-1406.2 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO THE PRINCIPLES GOVERNING COOPERATION IN P&D, PRODUCTION, AND PROCUREMENT OF DEFENSE EQUIPMENT (SHORT TITLE: COOPERATION ARRANGEMENT).

The Government of the United States (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG), hereinafter referred to as the Governments, are developing high technology weapons systems and other advanced items of defense equipment and are seeking to achieve greater cooperation in research, development, production and procurement in these areas in order to make the most rational use of their respective industrial, economic and technological resources, to achieve the greatest attainable military capability at the lowest possible cost, and to achieve greater standardization and interoperability of their weapons systems.

The Governments already have an Arrangement dated May 1963 for Joint Military Development and the USG has certain offset arrangements with HMG against purchases by HMG of major weapons systems and items of defense equipment.

In order to further the above aims, the Governments have decided to enter into an understanding and this Memorandum sets out the guiding principles governing mutual cooperation in defense equipment production and purchasing and associated offset arrangements. This Memorandum is intended to fit into the broader context of NATO Rationalization/

Standardization and to be compatible with any NATO arrangement that might subsequently be negotiated.

SECTION A: PRINCIPLES GOVERNING RECIPROCAL DEFENSE PURCHASING

1. Each Government has established its policies for strengthening the mechanisms essential to increasing cooperation in research, development, and production and procurement of military systems. In keeping with these policies, and in the interests of enhancing their mutual security and to assist the Governments in discharging better their mutual defense obligations, it is understood that the Governments will cooperate in all respects practicable, to the end that defense equipment production and procurement efforts of the two countries be administered so as to assure the maintenance of a long term and equitable balance in reciprocal purchasing of defense equipment. This balance will be at levels to be mutually determined.

2. The following principles to facilitate these objectives have been decided upon by the Governments:

a. Both Governments will provide appropriate policy guidance and administrative procedures within their respective Defense procurement organizations to achieve and maintain the agreed-upon balance of reciprocal Defense purchases.

b. The Governments will identify and nominate for consideration by each other items of defense equipment believed suitable to satisfy their respective requirements. The Governments will decide between them, to which items of defense equipment purchases this Memorandum of Understanding (MOU) will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis.

c. The detailed implementing procedures to be arranged will incorporate the following:

(i) Offers will be evaluated without applying price differentials under Buy-National laws and regulations consistent with national laws and regulations.

(ii) Offers will be evaluated without the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

(iii) Full consideration will be given to all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office.

(iv) Offers will be required to satisfy requirements for performance, quality, delivery, and cost.

POINTS OF CONCURRENCE

3. The objective is to avoid redundant testing. Neither government will duplicate tests where acceptable data is available from the other government's official test programs.

4. Existing T&E organisations and procedures of both governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either government.

5. To achieve a more widespread understanding of the two governments' T&E organisations and procedures in the US DoD, in the UK MOD, and in the Industries of both countries, the two governments will produce guidance information necessary to meet the purpose of this Annex, including:

a. The relationship between their respective T&E organizations and procedures.

b. A US DoD-UK MOD communications matrix for initial contacts.

6. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Services' independent operational test agency and in the UK, the Project Manager.

MUTUAL ACCEPTANCE PROCEDURES

7. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations:

a. To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be similar to the US Navy's Test and Evaluation Master Plan (TEMP) as outlined in OPNAV Instruction 3960.10.

b. For systems under development, the offering government will invite participation by the other early in the T&E program. Should the other government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of information necessary for the purposes of such T&E.

c. For systems for which development is complete, the offering government will ensure, subject to its laws, established policies,

procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d. Should one government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the two governments will decide by mutual agreement on any additional testing to be carried out. Such additional testing may be conducted by either country as mutually agreed. In addition, before such additional testing commences, concurrence will be reached by the two governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either government releases T&E data to the other, it is understood that, in the absence of any specific agreement to the contrary, such data is made available in confidence to the receiving government for the purpose of information and evaluation within such government and for no other use.

f. Each government will mark data transmitted to the other with a legend that will indicate the country of origin and the conditions of release, that the data relates to this MOU, and that is is furnished in confidence. Where appropriate the security classification will be shown. Corresponding arrangements will be made for records of data transmitted orally.

g. Each government will make its best effort to protect data submitted in confidence by the other government. In the event of any request under domestic legislation to make available to the public such data furnished by the other government, the recipient government will take all legal steps available to it to withhold the data from disclosure.

8. In any case where agreement cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority. For the US this will be the Director Defense Test and Evaluation and for the UK this will be the appropriate Systems Controller.

William J. Perry
For the Government of the United States

9 October 1978
Date

Sir Clifford Cornford
For the Government of the United Kingdom of Great Britain and Northern Ireland

9 October 1978
Date

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this Memorandum of Understanding and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Norway upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Norwegian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the Government of Norway
The Minister of Defense

Rolf Hansen
Date May 19, 1978

For the United States Government
The Secretary of Defense

Harold Brown
Date May 19, 1978

ANNEX I

I. INTRODUCTION

On 19 May 1978 the Governments of the United States (US) and Norway signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment." The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II. MAJOR PRINCIPLES

A. The US Department of Defense (DoD) and the Ministry of Defence of Norway (MOD) will each consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed or produced in the other country. (See also Paragraph III of this Annex). MOD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the Memorandum of Understanding and this Annex.

B. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

III. ACTION

In implementing the MOU, DoD and MOD will review and, where considered necessary revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and the MOD agree that having taken the measures listed below, they will have fulfilled their obligation under Paragraph 1, Article I, of the MOU, to exhaust all means at their disposal to maximize defense R&D cooperation and reciprocal procurement. These measures will be utilized in a reasonable manner recognizing among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Ensure that, consistently with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation.

F. Assist industries in their respective countries to identify and adivse the other government of their capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely

fashion to ensure adequate time for their respective industries to participate in the development or production procurement process.

H. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

I. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements such as the maintenance of a defense mobilization base are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from non-national sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

J. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

K. Both DoD and MOD will from time to time arrange visits by relevant personnel to the other country in order to actively explore possibilities for R&D cooperation and procurement.

IV. COUNTING PROCEDURES

The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MOD. In principle (1) all items procured by the overseas Base Exchanges and Commissary Operations for resale overseas shall be counted and (2) all defense items (and associated services included in a procurement contract) purchased by DoD and MOD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

C. Purchases by industry from the government or industry of the other country in aid of government defense contracts.

D. Purchases by a third country government from the governments of the United States or of Norway or from industries of the two countries as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded defense projects to which the United States and/or Norway are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

V. ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defence level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual United States/Norway Statement of the current balance and long-term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B. above.

D. Quality Assurance procedures outlined in STANAG 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the National laws and regulations of each country.

United States Government | For the Government of Norway

6-1406.4 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of the Netherlands, duly represented by their Ministers of Defense:

keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Netherlands statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed. Such statement will take account of United States-Netherlands purchases of defense equipment and services and related offset agreements effected in the years from 1973 onwards and will be periodically reviewed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for succesive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Covernment considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Covernment to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

3. The Parties hereto agree that, for the purposes of this MOU, references to the Kingdom of the Netherlands shall apply only to its territory in Europe.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands
The Minister of Defense

Willem Scholten

Date August 24, 1978

For the Government of the United States of America
The Secretary of Defense

Harold Brown

Date July 25, 1978

ANNEX I

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 24 August 1978, the Governments of the United States and the Kingdom of the Netherlands signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production and procurement of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MOU.

2. MAJOR PRINICPLES

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of the Netherlands (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

B. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning, intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into

F. The Committee will alternately meet in the United States and in the Netherlands. The country in which a particular meeting will take place will provide the Chairman and the secretariat for that meeting.

For the Government of the United States of America

Dr. William J. Perry

Date 21 December 1978

For the Government of the Netherlands

Lt. General Hensen

Date 21 December 1978

6-1406.5 MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree

that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding.

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations, and arms transfer policy. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon licensing arrangements whereby commercial firms in the US or Italy have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third-country.

13. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferees without the prior written consent of the originating Government.

14. Both Governments will undertake their best efforts to assist in negotiating licenses, ties and technical information exchanges with their respective industries.

15. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for an Italian-American Committee for Mutual Cooperation, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The National Armament Director in the Ministry of Defense, in coordination with the other appropriate governmental bodies, will be the responsible authority of the Government of Italy for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the defense industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to familiarize their respective procurement and requirements offices with the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by either Government for security

6-1406.9 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Kingdom of Denmark duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,
- Ensure the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

36640 Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified and cost-effective defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Danish Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

7-104.4 *Notice to the Government of Labor Disputes*. Insert the following clause in all contracts involving the furnishing or production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Procuring Activity concerned determines to be appropriate for the use of such a clause.

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (1958 SEP)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

(End of clause)

7-104.5 *Patent Indemnity*. In accordance with 9-103 and 9-103.1, insert the following clause.

PATENT INDEMNITY (1975 JUN)

If the amount of this contract is in excess of $10,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (i) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor: (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

(a) In accordance with 9-103.1(b) and 9-103.3, add one of the following sentences:

The foregoing shall not apply to the following:
(Specifically identify the items to be
excluded from the Patent Indemnity clause.) (1964 SEP)

or

The foregoing shall apply only to the following:
(Specifically identify the items to which
the Patent Indemnity clause applies.) (1964 SEP)

(b) In accordance with 9–103.4, insert the following clause.

WAIVER OF INDEMNITY (1955 JAN)

Any provision of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in the performance of this contract, of any invention covered by the United States patents identified as listed below, and waives indemnification by the Contractor with respect to such patents: (Identify the patents by number or by other means if more appropriate).

[End of clause]

7–104.6 *Filing of Patent Applications.* In accordance with 9–106, insert the following clause.

FILING OF PATENT APPLICATIONS (1969 DEC)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S.C. 181–18 or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the United States Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application in the United States disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed in any country, other than in the United States as provided in (a) and (b) of this clause, an application or registration for a patent containing any of said subject matter without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter, and shall also promptly furnish to the Contracting Officer the serial number, filing date, and name of country of any such patent application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts which require security classification markings to be placed on the application.

(e) The substance of this clause shall be included in all subcontracts which cover or are likely to cover classified subject matter.

[End of clause]

7–104.7 *Contract Schedule Subline Items Not Separately Priced.* In accordance with 20–304.2(c)(ii) and at the option of the contracting officer, the following clause may be inserted.

CONTRACT SCHEDULE SUBLINE ITEMS NOT SEPARATELY PRICED—WITHHOLDING OF BILLING AND PAYMENT (1970 NOV)

If the unit price of any contract subline or exhibit subline item contained in the Schedule of this contract is not separately priced ("NSP" entered as the unit price column) and the unit price for such subline item is included within the unit price of a related subline item, payment shall not be made nor shall the Contractor invoice the Government for any portion of a contract line item or exhibit line item which contains a "NSP" subline until the total quantity of all related contract subline items or exhibit subline items have been delivered and accepted. This clause is not applicable to Technical Data.

[End of clause]

7–104.8 *Reporting and Refund of Royalties.*

(a) In accordance with 9–110(d), insert the following clause.

REPORTING OF ROYALTIES (FOREIGN) (1966 OCT)

(a) If this contract is in an amount which exceeds fifty thousand United States dollars ($50,000), the Contractor shall report in writing to the Contracting Officer, during the performance of this contract the amount of royalties paid or to be paid by the Contractor directly to others in the performance of this contract. The Contractor shall also (i) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer, and (ii) insert a provision similar to this clause in any subcontract hereunder which involves an amount in excess of the equivalent of fifty thousand United States dollars ($50,000).

(b) The term "royalties" as used herein refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like for the use of or for rights in patents or patent applications.

[End of clause]

(b) In accordance with 9–111, insert the following clause.

REFUND OF ROYALTIES (1968 FEB)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use or for rights in patents and patent applications in connection with the performance of this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with the performance of this contract and subcontracts hereunder together with the reasons therefor.

(d) The Contractor will be compensated for royalties reported under (c) above only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. Therefore, to the extent that any royalties which are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within three (3) years subsequent to final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor

shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds two hundred and fifty dollars ($250).

(End of clause)

7-104.9 *Rights in Data and Computer Software.*

(a) *Basic Data Clause.* In accordance with 9-203 and 9-603, insert the following clause.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (1981 MAY)

(a) *Definitions.*

(1) *Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software documentation. *Technical data* does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

(2) *Computer* - a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on these data, or a device that operates on analog data by performing physical processes on the data.

(3) *Computer Software* - computer programs and computer data bases.

(4) *Computer Program* - a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(5) *Computer Data Base* - a collection of data in a form capable of being processed and operated on by a computer.

(6) *Computer Software Documentation* - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) *Unlimited Rights* means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(8) *Limited Rights* means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for:

(i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above.

(9) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

(i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) copy computer programs for safekeeping (archives) or backup purposes;

(iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(10) *Commercial Computer Software* - Computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

(b) *Government Rights.*

(1) *Unlimited Rights.* The Government shall have unlimited rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (2)(ii) below);

(v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) technical data pertaining to end-items; components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, *e.g.*, specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure; and

(ix) technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis of subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited Rights.* The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and

(ii) unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (vi), (vii), and (viii). The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below in which is inserted:

A. the number of the prime contract under which the technical data is to be delivered,

B. the name of the Contractor and any subcontractor by whom the technical data was generated, and

C. an explanation of the method used to identify limited rights data.

LIMITED RIGHTS LEGEND

Contract No. ..... .

Contractor: ..... .

Explanation of Limited Rights Data Identification Method Used

....

....

These portions of this technical data indicated as limited rights data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture or, in

the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for: (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or (ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted Rights.*

(A) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(9)(i) through (iv). Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to restrictions stated in Contract No. ..... with .....*Name of Contractor*)..... .

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(B) Notwithstanding (A) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

RESTRICTED RIGHTS LEGEND

Use, duplication, or disclosure by the Government is subject to restrictions as set forth in paragraph (b)(3)(B) of the Rights in Technical Data and Computer Software clause in DAR 7-104.9(a).

_____

(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(i) Title to and ownership of the software and documentation shall remain with the Contractor.

(ii) Use of the software and documentation shall be limited to the facility for which it is acquired.

(iii) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtains without restrictions.

(iv) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *provided* that the unmodified portions shall remain subject to these restrictions.

(v) If the Contractor, within sixty (60) days after a written request, fails to substantiate by clear and convincing evidence that computer software and documentation marked with the above

Restricted Rights Legend are commercial items and were developed at private expense, or if the Contractor fails to refute evidence which is asserted by the Government as a basis that the software is in the public domain, the Government may cancel or ignore any restrictive markings on such computer software and documentation and may use them with unlimited rights. Such written requests shall be addressed to the Contractor as identified in the Restricted Rights Legend.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this para-

(v) any contract under which construction and architectural drawings and specifications are the only deliverable items;

(vi) any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(vii) any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Material Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause in 7-104.98, and when such clause is included in the contract.

(o) *Technical Data Warranty.*

(1) In accordance with 1-324.6, the following clause may be inserted.

WARRANTY OF TECHNICAL DATA (1974 NOV)

(a) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three (3) years after completion of the delivery of the line item of data (as identified in DD Form 1423) of which the data forms a part; or any longer period specified in the contract.

(c) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) The following remedies shall apply to all breaches of the above warranty *provided* that the Government notifies the Contractor of the breach in writing within the warranty period.

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, he may:

(i) by written notice, direct the Contractor to correct or replace at his expense the nonconforming technical data promptly; or

(ii) if he determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment in lieu of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under (1) (i) above, the Contracting Officer may, within a reasonable time of such refusal or failure:

(i) by contract or otherwise, correct or replace the nonconforming technical data and charge the Contractor the cost occasioned to the Government thereby; or

(ii) elect a price or fee adjustment in lieu of correction or replacement.

(e) The remedies set forth in this clause represent the exclusive means by which the rights conferred on the Government by this clause may be enforced.

(f) The provisions of this clause apply anew to that portion of any technical data which is corrected or furnished in replacement under (d)(1)(i) above.

(End of clause)

(2) In accordance with 1-324.6(b), the following provision may be inserted in firm fixed-price contracts as paragraph (d)(3) of the Warranty of Technical Data clause set forth above.

(3) In addition to the remedies specified under (1) and (2) above, the Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 10% of the total contract price. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, *provided* that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

(3) In accordance with 1-324.6(b), the following provision may be inserted in fixed-price-incentive contracts as paragraph (d)(3) of the Warranty of Technical Data clause in 7-104.9(o).

(3) In addition to the remedies specified under (d)(1) and (2) above, Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 75% of the target profit. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. Damages due the Government under the provisions of this warranty shall not be considered as an allowable cost. The additional liability specified in this paragraph (3) shall not apply:

(i) with respect to the requirement under Category E or I of MIL-D-1000, *provided* that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or

(ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

(p) *Restrictive Markings on Technical Data.* In accordance with 9-202.3(c)(2), insert the following clause.

RESTRICTIVE MARKINGS ON TECHNICAL DATA (1975 MAR)

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall maintain (1) records to show how the procedures of (a) above were applied in determining that the markings are authorized, as well as (2) such records as are reasonably necessary to show pursuant to (d)(ii) of the "Rights in Technical Data and Computer Software" clause that restrictive markings used in any piece of technical data delivered under this contract are authorized.

7-104.20 *Utilization of Labor Surplus Area Concerns.*
(a) In accordance with 1-805.3(a), insert the following clause.

UTILIZATION OF LABOR SURPLUS AREA CONCERNS (1978 JUN)

(a) It is the policy of the Government to award contracts to labor surplus area concerns which have agreed to perform substantially in labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business and Small Disadvantaged Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) labor surplus area concerns which are also small business concerns, (ii) other small business concerns, and (iii) other labor surplus area concerns.

(End of clause)

(b) In accordance with 1-805.3(b), insert the following clause.

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (1978 JUN)

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Labor Surplus Area Concerns" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the "Utilization of Labor Surplus Area Concerns" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) For subcontracting purposes, a "labor surplus area concern" is a concern that has agreed to perform substantially in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production in such areas amount to more than 50% of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of $500,000 and which contains the clause entitled "Utilization of Labor Surplus Area Concerns" that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

(End of clause)

7-104.21 *Limitation on Withholding of Payments.*

(a) Except as provided in (b) below, the following clause shall be inserted in contracts which include more than one clause or Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed.

LIMITATION ON WITHHOLDING OF PAYMENTS (1958 SEP)

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; *provided*, that this limitation shall not apply to—

(i) withholdings pursuant to any clause relating to wages or hours of employees;
(ii) withholdings not specifically provided for by this contract; and
(iii) the recovery of overpayments.

(End of clause)

(b) The clause in (a) above is not required when:

(i) the contracting officer or the procuring activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or
(ii) all of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them is being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

7-104.22 *Equal Opportunity Pre-Award Clearance of Subcontracts.* Insert the following clause in all contracts containing a "Subcontracts" clause prescribed by 23-201 (see also 23-201.4).

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

issued in accordance with this clause. Such notice shall be furnished to the CAO immediately upon notification from the Contracting Officer that duty-free entry will be accorded the supplier. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(c) This clause shall not apply to purchases of foreign supplies in connection with this contract if (i) such foreign supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) segregation of such supplies to insure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor agrees to insert the substance of this clause in any first-tier subcontract hereunder in connection with which foreign supplies in excess of $10,000 may be imported by the subcontractor into the United States, its possessions, or Puerto Rico.

(End of clause)

7-104.32 *Duty-Free Entry of Qualifying Country Supplies.* The following clause shall be inserted in accordance with 6-104.5 and 6-603.3(c).

DUTY-FREE ENTRY—QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (1980 OCT)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(i) all end items which constitute "qualifying country end products" (as defined in 6-001) to be delivered under this contract; and

(ii) all supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided*, That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of his subcontract.

(b) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to non-governmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of qualifying country end products as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents submitted to customs, covering qualifying country end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

(i) Government prime contract number;

(ii) identification of carrier;

(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, kindly release the shipments under 8.59CP and notify Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, New York 10013, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate";

(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of qualifying country supplies that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government under the contract. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the qualifying country supplier. The notice shall identify (i) the qualifying country, (ii) the contract number, and (iii) the scheduled delivery date(s).

(g) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (i) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business; and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(End of clause)

7-104.33 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause:

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-104.34 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the following clause.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

ADVANCE PAYMENT (1976 OCT)

(1) *Amount of Advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (14)(d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (14)(a) below; and (iii) without a properly certified invoice or invoices.

(2) *Special Bank Account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14)(b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided,

(ii) for any change to cost accounting practices proposed in accordance with paragraph (a)(4)(B) or (a)(4)(C) of the clause entitled "Cost Accounting Standards" or with paragraph (a)(3) or (a)(5) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices" not less than sixty (60) days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or

(iii) for any failure to comply with an applicable Cost Accounting Standard or to follow a disclosed practice as contemplated by paragraph (a)(5) of the clause entitled "Cost Accounting Standards" or with paragraph (a)(4) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices" within sixty (60) days (or such other date as may be mutually agreed to) after the date of agreement of such noncompliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within sixty (60) days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a)(i), (ii), or (iii) above.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the clause entitled "Cost Accounting Standards" or with paragraphs (a)(3), (a)(4), and (a)(5) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices."

(d) When the subcontract is subject to either the clause entitled "Cost Accounting Standards" or the clause entitled "Disclosure and Consistency of Cost Accounting Practices" so state in the body of the subcontract and/or in the letter of award. Self-deleting clauses shall not be used.

(e) Include the substance of this clause in all negotiated subcontracts containing either the clause entitled "Cost Accounting Standards" or the clause entitled "Disclosure and Consistency of Cost Accounting Practices." In addition within thirty (30) days after award of such subcontract submit the following information to the Contractor's cognizant Contract Administration Office for transmittal to the Contract Administration Office cognizant of the subcontractor's facility.

(1) Subcontractor's name and subcontract number.
(2) Dollar amount and date of award.
(3) Name of Contractor making the award.
(4) A statement as to whether the subcontractor has made or proposes to make any changes to

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards clause or Disclosure and Consistency of Cost Accounting Practices clause because of the award of this subcontract unless such changes have already been reported. If award of the subcontract results in making a Cost Accounting Standard(s) effective for the first time, this shall also be reported.

(f) For negotiated subcontracts containing the clause entitled "Cost Accounting Standards", require the subcontractor to comply with all Standards in effect on the date of final agreement on price as shown on the subcontractor's signed certificate of current cost or pricing data or date of award whichever is earlier.

(g) In the event an adjustment is required to be made to any subcontract hereunder, notify the Contracting Officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this contract, as appropriate, based upon the adjustment established under the subcontract. Such notice shall be given within thirty (30) days after receipt of the proposed subcontract adjustment, or such other date as may be mutually agreed to, and shall include a proposal for adjustment to such higher tier subcontract or prime contract as appropriate.

(h) When either the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause and this clause are included in subcontracts, the term "Contracting Officer" shall be suitably altered to identify the purchaser.

(End of clause)

7-104.84 *Fast Payment Procedure.*

(a) In accordance with 3-606.3, the following clause shall be used in small purchases:

FAST PAYMENT PROCEDURE (1981 MAY)

(a) *General.* This is a fast payment order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) *Responsibility for Supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government

upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the purchase order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, *provided* instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government (one hundred eighty (180) days for overseas shipments).

(c) *Preparation of Invoice.*

(1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with Clause 3 of the General Provisions of Purchase Order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement. All invoices shall also be prominently marked "Fast Pay."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three (3) years and to furnish such bills to the Government when requested for audit purposes.

(3) In the event this order requires the preparation of a Material Inspection and Receiving Report (DD Form 250), the Contractor has the option of either preparing the DD Form 250 or including the following information on the invoice, in addition to that required in (c)(1) above: (A) a statement in prominent letters "NO DD 250 PREPARED"; (B) shipment number; (C) mode of shipment; and (D) at line item level, (i) National Stock Number and/or manufacturer's part number, (ii) unit of measure, (iii) Ship-To-Point, (iv) Mark-For-Point if in contract, and (v) MILSTRIP document number if in contract. When a DD Form 250 is not required, the invoice will include the following information: (i) Ship-To-Point, (ii) Mark-For-Point and MILSTRIP document number if in contract, as well as the information in (c)(1) above. In all cases where no DD Form 250 is prepared, a copy of the invoice will be included in each shipment.

(d) *Certification of Invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited purchase order.

(End of clause)

(b) In accordance with 3-606.2, the following clause shall be used in contracts and delivery orders for (1) brand name commissary resale subsistence and (2) commercial type medical supplies for direct shipment overseas:

FAST PAYMENT PROCEDURE (1981 MAY)

(a) *General.* This is a fast payment contract or order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) *Responsibility for Supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the contract or order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, *provided,* instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government (one hundred eighty (180) days for overseas shipments).

(c) *Preparation of Invoice.*

(1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with the terms of this contract or order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement.

All invoices shall also be prominently marked "Fast Pay."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three (3) years and to furnish such bills to the Government when requested for audit purposes.

(3) In the event this order requires the preparation of a Material Inspection and Receiving Report (DD Form 250), the Contractor has the option of either preparing the DD Form 250 or including the following information on the invoice, in addition to that required in (c)(1) above: (A) a statement in prominent letters "NO DD 250 PREPARED"; (B) shipment number; (C) mode of shipment; and (D) at line item level, (i) National Stock Number and/or manufacturer's part number, (ii) unit of measure, (iii) Ship-To-Point, (iv) Mark-For-Point if in contract, and (v) MILSTRIP document number if in contract. When a DD Form 250 is not required, the invoice will include the following information: (i) Ship-To-Point, (ii) Mark-For-Point and MILSTRIP document number if in contract, as well as the information in (c)(1) above. In all cases where no DD Form 250 is prepared, a copy of the invoice will be included in each shipment.

(d) *Certification of Invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited contract or order.

(e) *Fast Pay Container Identification.* All outer shipping containers shall be marked "FAST PAY".

(End of clause)

7-104.85 *FOB Origin — Bills of Lading.* F.O.B. origin contracts shall include one of the following clauses in accordance with 19-403.3(b) and (c).

(a) *F.O.B. Origin — Government Bills of Lading and Prepaid Postage.* In accordance with 19-403.3(c), F.O.B. origin contracts, except those utilizing the Fast Payment Procedure clause, shall include the following clause:

F.O.B. ORIGIN — GOVERNMENT BILLS OF LADING AND PREPAID POSTAGE (1977 DEC)

F.O.B. origin shipments shall be made on Government bills of lading or, if the supplies are mailable, via the U.S. Postal Service or a foreign postal system as appropriate, with postage costs prepaid by the Contractor. Any direct charge for postage costs will be listed as a separate item on invoices for the supplies shipped. Use of agency official indicia mail by contractors is not authorized. Quantities will not be divided into mailable lots for the express purpose of avoiding movement by other modes of transportation. In the absence of other arrangements, Government bills of lading can be obtained by completing and submitting DD Form 1659, "Application for United States Government Bill of Lading / Export Traffic Release". Unless otherwise directed, the Contractor shall address overseas parcel post to the ultimate consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

handling, manufacture, packaging, transportation, storage, inspection or disposal of, or any other use which will involve exposure to such hazardous material as defined in Federal Standard No. 313A ("Material Safety Data Sheet, Preparation and Submission of"). For safety precautions for ammunition and explosives, see 1-323.1.

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (1977 OCT)

(a) As used in this clause, *hazardous material* shall be as defined in Federal Standard No. 313A ("Material Safety Data Sheet, Preparation and Submission of"), in effect on the date of this contract.

(b) The Contractor shall prepare and submit Material Safety Data Sheet (Form OSHA-20 (DoD)) in accordance with Federal Standard No. 313A for all hazardous material, whether or not listed in Appendix A of the Standard, delivered pursuant to this contract or for which performance of work, use, handling, manufacture, packaging, transportation, storage, inspection or disposal of, or any other use after delivery to the Government designated destination will involve exposure to hazardous materials or items containing such materials. Material Safety Data Sheets shall be submitted five (5) days prior to delivery of the material.

(c) The requirements of this clause, or any act or failure to act by the Government in surveillance or enforcement of this clause, shall not affect or relieve the Contractor of any responsibility or liability for the safety of Government or Contractor personnel or property, or of any subcontractor or vendor personnel.

(d) Nothing contained in this clause shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with hazardous material in the performance of this contract.

(e) *Government's rights in data furnished under this contract with respect to hazardous material:*

(i) The Government shall have the right to use, duplicate and disclose any data to which this clause is applicable for the purposes of apprising personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials and for medical treatment of those affected by such material, and to have others use, duplicate, and disclose such data for the Government for such purposes.

(ii) Such data shall not be duplicated, or disclosed, or released outside the Government, in whole or in part for any procurement or manufacturing purpose, if the following legend is marked on each piece of data to which this clause is applicable:

"This is furnished under United States Government Contract No. ..... and shall not be used, duplicated or disclosed for any procurement or manufacturing purpose without the permission of ..... This legend shall be marked on any reproduction hereof."

(End of legend)

(iii) The Contractor shall not place the legend set forth above or any other restrictive legend on any data which the Contractor or any subcontractor previously delivered to the Government without limitations or which should be delivered without limitations under the conditions prescribed by the "*Rights in Technical Data and Computer Software*" clause of ASPR 7-104.9(a).

(iv) Notwithstanding any other provision of this contract providing for rights in data, the rights of the Government to use, duplicate, and disclose data furnished pursuant to the requirements of this clause shall be as provided by this clause. The Government is not precluded from using similar or identical data acquired from other sources.

(f) The Contractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in any subcontract of any tier (including purchase designations or purchase orders) hereunder which involves hazardous material.

(End of clause)

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36651

7-104.99 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35 in all fixed-price incentive contracts and contracts providing for price redetermination.

7-104.100 *Certificate of Conformance.* In accordance with 14-306(c), insert the following clause.

CERTIFICATE OF CONFORMANCE (1979 MAR)

Unless required otherwise in the contract or by the CAO, the Contractor is required to deliver the supplies to be furnished hereunder with a "Certificate of Conformance." In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. The Contractor signed certificate shall be attached to or included on the top copy of the DD 250 or 1155 copies distributed to the payment office. When acceptance is at destination, a copy of the signed certificate shall also be attached to or entered on copies of the DD 250, DD 1155, or other appropriate documents accompanying the shipment. This certificate shall read as follows: "I hereby certify that on _____ the _____ provided
(Date) (Contractor's Name)
the supplies called for by Contract No. _____
via _____
(Carrier)
on _____ in accordance with all applicable requirements for shipment. I further certify that the supplies are of the quality specified and are in all respects in conformance with the contract requirements, including specifications and/or drawings, preservation, packaging, packing and marking requirements; physical item identification (part number), and in the quantity shown on this, or the attached acceptance document."
(Bill of Lading or Shipping Document)
Date of Execution: _____
Signature _____
Title _____

(End of Clause)

7-104.101 Reserved.

7-104.102 *Certification of Requests for Adjustment or Relief Exceeding $100,000.* In accordance with 1-342, insert the following clause.

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (1980 FEB)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

_____
(Official's Name)

_____
(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(i) requests for routine contract payments—for example, those for payment for accepted supplies and services, routine vouchers under cost reimbursement-type contracts, and progress payment invoices;

(ii) final adjustments under incentive provisions of contracts;

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

7-104.103 *Delivery of Excess Quantities of $100 or Less.* The following clause may be inserted in contracts for supplies:

DELIVERY OF EXCESS QUANTITIES OF $100 OR LESS (1980 DEC)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $100 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $100 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

7-104.104 *Reserved.*

7-204.55 *Cost/Schedule Control Systems.* In accordance with 1-331(h) and 3-501(b) Section C (xiv), insert the clause in 7-104.87.

7-204.56 *Engineering Change Proposals (ECP's).* In accordance with 26-205, insert the clause in 7-104.89.

7-204.57 *Change Order Accounting.* In accordance with 26-205, insert the clause in 7-104.90.

7-204.58 *Time of Delivery.* Insert a clause in accordance with 7-104.92.

7-204.59 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-204.60 *Preference For United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-204.61 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-403.2(c), insert the following clause

SUBMISSION OF COMMERCIAL FREIGHT BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (1976 FEB)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the

General Services Administration — FZATR
Chester A. Arthur Building
Washington, D. C. 20406

(or to the ACO if specified) individual commercial freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of $500.00.

(End of clause)

7-204.62 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-204.63 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-204.64 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-204.65 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-204.66 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-204.67 *Reserved.*

7-204.68 *Offset Arrangement.* In accordance with 6-1310.3(d), insert the clause in 7-104.105.

7-204.69 *Qualifying Country Sources as Subcontractors.* In accordance with 6-1403.4, insert the clause at 7-104.106.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36653

7-205 Additional Clauses. The following clauses shall be inserted in cost-reimbursement type supply contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-205.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-205.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-205.3 *Title and Risk of Loss.* Insert the clause in 7-103.6.

7-205.4 *Bill of Materials.* In accordance with 7-105.6, insert the clause therein.

7-205.5 *Reserved.*

7-205.6 *Stop Work Orders.* The clause in 7-105.3, if modified by changing (i) the words "the 'Termination for Convenience' clause of this contract" to "the 'Termination' clause of the contract" and (ii) the words "an equitable adjustment shall be made in the delivery schedule or contract price, or both" to "an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected," is authorized for use in any cost-reimbursement type contract under the criteria and in accordance with the instructions in 7-105.3.

7-205.7 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

Secretary and approved by the Contracting Officer; (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(End of clause)

7-303.63 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-303.64 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-303.65 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-303.66 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-303.67 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-303.68 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-303.69 *Reserved.*

7-303.70 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-304 Additional Clauses. The following clauses shall be inserted in fixed-price research and development contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

7-304.1 *Changes.*

CHANGES (1965 JUN)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of inspection, delivery, or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-304.2 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-304.3 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-304.4 *Bill of Materials.* In accordance with 7-105.6, the clause set forth therein may be inserted.

7-304.5 *Notice of Shipments.* The clause in 7-105.4 may be inserted.

7-304.6 *Reports of Work.* In accordance with 7-404.6, the clause set forth therein may be inserted.

7-304.7 *Liquidated Damages.* In accordance with 1-310, the clause in 7-105.5 may be inserted.

7-304.8 *Reserved.*

7-304.9 *Reserved.*

7-304.10 *Warranties.* In accordance with 1-324, an appropriate warranty may be inserted.

7-304.11 *Stop Work Orders.* In accordance with 7-105.3, the clause set forth therein may be inserted.

7-304.12 *Term of Performance or Delivery Date.* Insert a clause in accordance with 1-305.5. Clauses in 7-104.92 shall be used as a guide.

INDEMNIFICATION UNDER PUBLIC LAW 85-804 — COST-REIMBURSEMENT TYPE CONTRACTS (1974 APR)

(a) Pursuant to Public Law 85-804 (50 U.S.C. 1431 - 1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(i) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(ii) loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(iii) loss of, damage to, or loss of use of property of the Government but excluding loss of profit;

to the extent that such a claim, loss or damage (A) arises out of or results from a risk defined in this contract to be unusually hazardous or nuclear in nature and (B) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for:

(i) claims by the United States (other than those arising through subrogation) against the Contractor; or

(ii) losses affecting the property of such Contractor;

when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. For purposes of this clause, the term "*principal officials*" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) all or substantially all of the Contractor's business, or

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) a separate and complete major industrial operation in connection with the performance of this contract.

The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specifically authorized by the Secretary and approved by the Contracting Officer (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) In addition to the Contractor's responsibilities under the "Insurance — Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action. The cost of insurance (including self-insurance), covering a risk defined in this contract as unusually hazardous or nuclear in nature shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) "Limitation of Cost" / "Limitation of Funds" clauses of this contract do not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost" clause of this contract.

(End of clause)

7-403.58 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-403.59 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-403.2(c), insert the clause in 7-204.61.

7-403.60 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-403.61 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-403.62 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-403.63 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-403.64 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-403.65 *Reserved.*

7-403.66 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-404 Additional Clauses. The following clauses shall be inserted in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-404.1 *Changes.*

CHANGES (1967 APR)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

(i) drawings, designs, or specifications;

(ii) method of shipment or packing; and

(iii) place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made.

(i) in the estimated cost or delivery schedule, or both;

(ii) in the amount of any fixed fee to be paid to the Contractor; and

(iii) in such other provisions of the contract as may be affected, contract shall be modified in writing accordingly.

7-504.13 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-504.14 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-504.15 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-504.16 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-504.17 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-504.18 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-504.19 *Reserved.*

7-504.20 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-505 Additional Clause. The following clause shall be inserted in personal services contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-505.1 *Alterations in Contract.* In accordance with 7-105.1(a), insert the clause therein.

Part 6—Construction and Architect-Engineer Contracts

7-600 Scope of Part. This Part sets forth uniform contract clauses for use in connection with the procurement of construction (see 18-100) and of architect-engineer services for the production and delivery of designs, plans, drawings and specifications, or for supervision and inspection of construction, or both.

7-601 General. As used throughout this Part, the term "construction contract" means any contract (other than one entered into on Standard Form 19 or DD Form 1155 (*see 16-401.2, 16-402.2, and 18-302*), a letter contract, a notice of award, or a modification not effecting new procurement) which is for construction as defined in 18-101.1.

7-602 Required Clauses for Fixed-Price Construction Contracts. The following clauses shall be inserted in all fixed-price construction contracts, except as otherwise provided in this Part.

7-602.1 *Definitions.*

DEFINITIONS (1964 JUN)

(a) The term "Head of the Agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

(End of clause)

Additional definitions may be included *provided* they are not inconsistent with the foregoing clause or the provisions of this Regulation.

7-602.2 *Specifications and Drawings.*

SPECIFICATIONS AND DRAWINGS (1964 JUN)

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

(End of clause)

7-602.3 *Changes.*

CHANGES (1949 FEB)

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractors noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of this clause and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under this clause shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or this clause, the Director shall proceed in accordance with 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (*e.g.*, mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (*e.g.*, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

7-603.61 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-603.62 *Reserved.*

7-604 Additional Clauses. The following clauses shall be inserted in contracts when it is desired to cover the subject matter thereof in such contracts.

7-604.1 *Alterations in Contract.* (See 16-401.1(viii).) The following clause may be used if applicable, in negotiated contracts when Standard Form 23 is not used:

ALTERATIONS (1961 JAN)

The following alterations were made in this contract before it was signed by the parties hereto.

(End of clause)

7-604.2 *Approval of Contract.* The contract clause in 7-105.2 may be inserted.

7-604.3 *Layout of Work.* The following clause is authorized for use in construction contracts when appropriate.

LAYOUT OF WORK (1965 JAN)

The Contractor shall lay out his work from Government established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, and materials and labor as may be required in laying out any part of the work from the base lines and bench marks established by the Government. The Contractor will be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Contracting Officer. It shall be the responsibility of the contractor to maintain and preserve all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed, by the Contractor or through his negligence, prior to their authorized removal, they may be replaced by the Contracting Officer at his discretion. The expense of replacement will be deducted from any amounts due or to become due the Contractor.

(End of clause)

(2) "*Safety precaution areas*" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined plane (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continues upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plane is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the landing areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white squares of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects, placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause

(End of clause)

* At some airfields the width of the primary surfaces is 1500 feet (750 feet on each side of the runway centerline). In such instances substitute the proper width in the clause

7-606.19 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-606.20 *Reserved.*

7-606.21 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-606.22 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-606.23 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-606.24 *Value Engineering.* A VE Incentive or Program Requirement clause may be included in Cost-Reimbursement Type construction contracts at the discretion of the Contracting Officer. Use 7-602.50 or 7-104.44 (as modified by 7-204.32(b) or (c)) to suit the procurement.

7-606.25 *Patent Rights.* In accordance with 9-107 and 18-908, insert the appropriate clause in 7-302.23.

7-606.26 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-606.27 *Reporting of Royalties.* In accordance with 9-110(d), insert the clause in 7-104.8(a)

7-606.28 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-606.29 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-606.30 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-606.31 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-606.32 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-606.33 *Reserved.*

7-608.24 *Reserved.*

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36659

(i) credits to, or adjustment of the prices of, the related contracts, subcontracts, or purchase orders benefiting from the use of the modernized or replacement equipment; or

(ii) payment to the Government through the Contracting Officer having cognizance of the Government production and research property; or

(iii) such other means as may be mutually agreed to.

(End of clause)

7-705.23 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-705.24 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-705.25 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-705.26 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-705.27 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-705.28 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-705.29 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-705.30 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-705.31 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-705.32 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-705.33 *Reserved.*

7-705.34 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-705.35 *Reserved.*

7-902.35 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-902.36 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-902.37 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-902.38 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-902.39 *Warranty of Technical Data.* In accordance with 1-324.6, insert the clause in 7-104.9(o).

7-902.40 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-902.41 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-902.42 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-902.43 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-902.44 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-902.45 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-902.46 *Reserved.*

7-902.47 *Limitations on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

Part 10—Stevedoring Contracts

7-1000 Scope of Part. This Part sets forth uniform contract clauses for use in stevedoring contracts as defined in 22-401. These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7-1001 Technical Provisions. The following clauses or appropriate revisions in accordance with 22-404 shall normally be included in all stevedoring contracts.

7-1001.1 *Scope of Contract.*

SCOPE OF CONTRACT (1964 AUG)

(a) *General.* The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at ..... upon the terms and conditions hereinafter set forth for the term of this contract, beginning ..... and ending.....; *provided*, however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

(b) *Contractor's Duties.*

(1) *Loading.* In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area; also from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks, in the order directed by and in a manner satisfactory to the Contracting Officer.

(2) *Discharging.* In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area; also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

(3) *Handling Explosives.* In addition to (1) and (2) above, the following provisions are applicable to the loading and discharging of explosives:

(*a*) In loading explosives the Contractor shall perform all the stevedoring services necessary for the breaking-out and discharging from railroad cars, trucks and/or lighters alongside ship or from place of rest on pier, transporting to the vessel, and properly loading, stowing and normal securing and chocking in the vessel in a manner directed by applicable U.S. Coast Guard, Army, or Navy regulations.

(*b*) In discharging explosives the Contractor shall perform all stevedoring services necessary for discharging cargo from the vessel to place of rest on pier or the transporting to and loading into railroad cars, trucks and/or lighters. The Contractor shall also prepare and line the cars for handling the cargo (except the laying of new flooring) and shall brace, secure, cut bands, and lash the cargo in the cars in accordance with applicable regulations and shall place "explosive" placards on the cars prior to release, and shall close and seal all doors.

(*c*) The furnishing and preparation of gates, studs, new flooring, etc., for blocking railroad cars, as well as prefabrication of blocking in the vessel's hold, will be at the expense of the Government.

(*d*) The Contractor shall not be compensated for standby time when caused by slow-up or delay of one of his operations, which delay directly affects the other operations, such as delay in loading railroad cars, or in discharging from ship's hatches, unless such slow-up or delay was beyond the control and without the fault or negligence of the Contractor. This does not include the time required for shifting railroad cars. No standby time will be allowed unless previously approved by the Contracting Officer.

7-1601.12 *Vans.*

VANS (1970 MAY)

Vans used in transporting unpacked and uncrated furniture shall be of the closed type and shall be supplied with sufficient clean pads, covers, and any other equipment to protect personal property adequately during transit and delivery. Vehicles used in transporting containerized personal property may be of the open type *provided*, a weatherproof tarpaulin is used to protect the shipment.

(End of clause)

7-1601.13 *Drayage.*

DRAYAGE (1977 APR)

(a) Drayage under the Schedules of Items in this contract shall include all outbound or inbound hauling of loose articles, containerized shipments and empty Government containers within the area of performance as defined in the clause entitled "Contract Areas of Performance." Each area includes the Contractor's facility, storage warehouse other than Contractor's facility, frequently used air and surface transportation terminals, military installation shipping offices and ocean or river terminals/piers. The price of each item of service includes drayage within the area awarded, unless otherwise provided in the item.

(b) Repositioning of empty Government containers within the contractual area of performance, shall be as directed by the Contracting Officer or his designated representative at no additional cost to the Government.

(End of clause)

7-1601.14 *Liability.*

LIABILITY (1980 JUL)

(a) "Article" means any shipping piece or package and its contents.

(b) If notified within one (1) year after delivery that the owner has discovered loss of or damage to his property, the Contractor agrees to indemnify the owner for loss of or damage to the owner's property which arises from any cause while it is in the Contractor's possession as follows:

(i) *Non-negligent Damage.* The Contractor shall indemnify owners for any loss of or damage to their property which results from any cause, other than the Contractor's negligence, at a rate not to exceed sixty cents ($.60) per pound per article.

(ii) *Negligent Damage.* When loss or damage is caused by the negligence of the Contractor, he shall be liable for the full cost of satisfactory repair or for the current replacement value of the article. The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(c) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor will be presumed to be liable for loss or damage of which it is timely notified.

(End of clause)

7-1601.15 *Erroneous Shipments.*

ERRONEOUS SHIPMENTS (1977 APR)

(a) It shall be the responsibility of the Contractor at his expense to have articles of personal property which he inadvertently packed with goods of other than the rightful owner forwarded to the rightful owner by the quickest means of transportation, as selected by the Contracting Officer.

(b) Further, it shall be the responsibility of the Contractor to insure that all shipments have been stenciled correctly. When a shipment is forwarded to an incorrect address due to incorrect stenciling by the Contractor or his personnel, the shipment shall be returned with the least possible delay to its rightful owner by a mode of transportation selected by the Contracting Officer. The Contractor shall be liable for all costs incurred including charges for preparation, drayage and transportation.

(c) It shall be the responsibility of the Contractor to deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. Pieces of one lot not included in delivery and remaining at Contractor's facility after the departure of the original shipment shall be forwarded to the owner with the least possible delay by a mode of transportation selected by the Contracting Officer or his designated representative. The Contractor shall be liable for all additional transportation costs incurred in excess of what it would have cost the Government had the entire lot been shipped at the same time.

(End of clause)

7-1601.16 *Additional Marking Instructions.*

ADDITIONAL MARKING INSTRUCTIONS (1970 MAY)

(a) All containers of professional books, papers or equipment shall be stenciled "Professional Books, Paper, Equipment" and their weights shall be shown separately on packing lists.

(b) Unaccompanied baggage containers shall be marked as such.

(End of clause)

7-1601.17 *Weight Certificates.*

WEIGHT CERTIFICATES (1970 MAY)

A weight certificate, in triplicate, from a certified scale or weighmaster shall be submitted to the transportation officer for all outbound shipments.

(End of clause)

7-1601.18 *Report of Lost/Damaged Material.*

REPORT OF LOST/DAMAGED MATERIAL (1977 APR)

It shall be the responsibility of the Contractor when making delivery to prepare a separate report listing all articles lost or damaged and describing such loss or damage. This report will be forwarded to the transportation officer within seven (7) working days after the delivery of the goods.

(End of clause)

7-1601.19 *Subcontracting.*

SUBCONTRACTING (1970 MAY)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

7-1601.20 *Additional Services.*

ADDITIONAL SERVICES (1977 APR)

Additional services not included in the schedule, but required for satisfactory completion of services ordered under this contract shall be provided at a rate not in excess of the rate for like services as contained in applicable Military Rate Tenders or in the absence of a Military Rate Tender, applicable tariff in effect at time of order.

(End of clause)

7-1702.17 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1702.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1702.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1702.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1702.21 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1702.22 *Reserved.*

7-1702.23 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1703 Clauses To Be Used When Special Construction Charges Are Expected. Insert the following clauses in contracts with common carriers whenever it is expected that in order to secure the services and facilities it will be necessary for the Government to reimburse the contractor for, or to assume a contingent termination liability for, all or part of the costs of constructing or providing the facilities or equipment. If the necessity of paying such charges or of assuming such a liability arises subsequent to the execution of the contract, these clauses shall be included in the contract by supplemental agreement. With the exception of the clauses prescribed by 7-1703.1 and 7-1703.2, the clauses prescribed by this paragraph may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

7-1703.1 *Labor Standards for Construction Work.* Except as provided in 18-703.3 and 18-703.4 when the special construction involves construction (as defined in 18-101.1) of a public building or public work, and under 12-106 the construction labor standards are applicable (see 22-1010.2), insert the clause in 7-705.5.

7-1703.2 *Buy American — Construction Contracts.* In accordance with 7-602.20 and 7-602.24, insert the clauses therein whenever the contract involves construction (as defined in 18-101.1).

7-1703.3 *Special Construction and Equipment Charges.*

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (1971 APR)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government, of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

7-1703.4 *Title to Communication Facilities and Equipment.*

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (1971 APR)

Notwithstanding payment by the Government of any of the Contractor's costs of contructing communication facilities and equipment, title to all contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

7-1703.5 *Subcontracts.* In accordance with the requirements of 23-201, insert an appropriate clause entitled Subcontracts.

7-1703.6 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-1703.7 *Minority Business Enterprises.* In accordance with 1-332, insert the appropriate clause or clauses in 7-104.36.

right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under this contract.

(d) This clause shall be deemed to constitute the exclusive contractual remedy of the Contractor for adjustment arising out of the decision to apply the Service Contract Act, as amended, to the work covered by this contract. Failure of the parties to reach an understanding as to such adjustment shall be considered a dispute subject to the Disputes clause of the contract.

(End of clause)

7-1903.42 *Patent Rights.* When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-1903.43 *Government Delay of Work.* The clause in 7-104.77 may be inserted.

7-1903.44 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1903.45 *Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.* In accordance with 7-104.81, insert the clause therein.

7-1903.46 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1903.47 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-1903.48 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1903.49 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-1903.50 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1903.51 *Value Engineering.*

(a) In accordance with 1-1702, insert the appropriate clauses in 7-104.44 modified, as required, to suit the particular procurement involved.

(b) Insert additional paragraph as follows:

( ) Contractor proposals which eliminate, modify or substitute new procedures for contractually required work procedures shall qualify for instant contract savings sharing. If this is a time and material or labor-hour contract, the "effect of the proposal on the Contractor's cost of performance," for purposes of the instant contract sharing paragraph (e)(i) of the clause, shall be determined by (i) multiplying the time per item saved by the elimination, modification, or substitution by the labor-hour rate agreed upon for the workers involved, and then (ii) multiplying the result by the number of items over which the task has been deleted, and (iii) taking into account in the usual manner the Contractor's cost of developing the proposal and of implementing the change, and increased Government costs related to implementing the proposal. (The result under (i) would be the unit cost reduction for purposes of determining future acquisition savings.)

(End of clause paragraph)

7-1903.52 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1903.53 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1903.54 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1903.55 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1903.56 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1903.57 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1903.58 *Reserved.*

7-1903.59 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1904 Additional Clauses for Use in Fixed-Price Service Contracts. The following clauses may be inserted in fixed price service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1904.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-2003.80 *Woman-Owned Business.* In accordance with 2-201(a)Sec.K(xviii), 2-201(b)(lviii), or 3-501(b)(3)Sec.K(xxi), insert the following provision in all solicitations except those made outside the United States.

WOMAN-OWNED BUSINESS (1978 SEP)

The offeror represents that the firm submitting this offer ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management. For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, women-owned if this information is available.

(End of provision)

7-2003.81 *Percent Foreign Content.* In accordance with 2-201(a)Sec.K(xix), 2-201(b)(lix), or 3-501(b)(3)Sec.K(xxii), insert the following provision in all solicitations except those made outside the United States.

PERCENT FOREIGN CONTENT (1978 SEP)

Approximately ---------- percent of the proposed contract price represents foreign content or effort.

(End of provision)

7-2003.82 Recovered Material. The following certification shall be inserted in solicitations as required by 1-2500.5(b):

RECOVERED MATERIAL (1979 MAR)

The Contractor certifies by signing this bid/proposal/quotation that recovered materials, as defined in DAR 1-2500.4, will be used as required by the applicable specifications.

36604 Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

7-2003.83 *Reserved.*

7-2003.84 *Statement of Equivalent Rates for Federal Hires.* In accordance with 12-1005.2(b)(3), insert the following provision in all solicitations for the acquisition of services to which the clause at 7-1903.41(a) applies:

RATES FOR EQUIVALENT FEDERAL HIRES (1979 SEP)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this solicitation incorporates a statement of Federal employee classes, incorporating wages paid and fringe benefits provided to each class. These Federal classes are comparable to the service employee classes expected to be employed under the contract resulting from this acquisition. (THE STATEMENT IS FOR INFORMATION ONLY).

(End of provision)

7-2003.85 *SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA).* In accordance with 12-1005.2(b)(5), insert the following provision in all solicitations for the acquisition of services to which—

(i) the clause at 7-1903.41(a) applies;

7-2102.5 *Misplaced Material.* If the contract involves work on or adjacent to a navigable stream, insert the clause in 7-603.32.

7-2102.6 *Signal Lights.* If the contract involves the use of marine equipment, insert the clause in 7-603.33.

7-2102.7 *Military Security.* In accordance with 7-104.12, insert the clause set forth therein in contracts involving classified facilities except in those contracts to be performed outside the United States, its possessions and Puerto Rico.

7-2102.8 *Identification of Employees.* In accordance with 7-603.34, insert the clause set forth therein where identification is required for security or other reasons.

7-2102.9 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-2102.10 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein in negotiated contracts in excess of $10,000.

7-2102.11 *Utilization of Small Business Concerns.* In accordance with 1-707.3(a), insert the clause in 7-104.14(a).

7-2102.12 *Small Business Subcontracting Program.* In contracts which may exceed $500,000 and which contain the clause in 7-104.14(a), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PROGRAM (1976 OCT)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors, including suppliers, under this contract. In this connection, the Contractor shall designate an individual to (i) maintain liaison with the Government on small business matters, and (ii) administer the Contractor's Small Business Subcontracting Program.

(b) Notwithstanding the instructions on DD Form 1140-1, prior to completion of the contract and as soon as the final information is available, the Contractor shall submit a one-time completed DD Form 1140-1 to the Government addressees prescribed thereon. The DD Form 1140-1 shall show the prime contract number in lieu of identifying a quarterly report period. This subparagraph (b) is not applicable if the Contractor is a small business concern.

(c) The Contractor further agrees (i) to insert the "*Utilization of Small Business Concerns*" clause in subcontracts which offer substantial subcontracting opportunities, and (ii) to insert in each such subcontract exceeding $500,000 a clause conforming substantially to the language of this clause except that subcontractors shall submit DD Form 1140-1 direct to the Government addressees prescribed on the Form. The Contractor will notify the Contracting Officer of the name and address of each subcontractor that will be required to submit a report on DD Form 1140-1

(End of clause)

7-2102.13 *Utilization of Minority Business Enterprises.* In accordance with 1-332.2, insert the clause in 7-104.36(a).

7-2102.14 *Minority Business Enterprises Subcontracting Program.* In accordance with 1-332.2, insert the clause in 7-104.36(b).

7-2102.15 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-2102.16 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-2102.17 *Convict Labor.* In accordance with Section XII, Part 2, insert the clause in 7-104.17.

7-2102.18 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36865

7-2102.19 *Audit by Department of Defense.* In accordance with 7-104.41, insert the clause therein.

7-2102.20 *Subcontractor Cost or Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-2102.21 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-2102.22 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-2102.23 *Reserved.*

Part 22—Reserved

This Part reserved pending approval of a test of the Short Form Research Contract (SFRC). (See Item XVI, DAC #76-27, dated 15 May 1981.

Part 23—Automatic Data Processing (ADP) Contracting

7-2300 Scope of Part. In accordance with 4-1104.5, this Part sets forth additional uniform contract clauses for use in connection with automatic data processing (ADP) contracting when procurement authority is delegated by GSA. (See Section IV, Part 11.)

7-2301 Reserved.

7-2302 Clauses to Use When Applicable.

7-2302.1 *Limitation of Liability.* The following clause shall be used in all solicitations and contracts for ADPE, software, ADP maintenance services, ADP supplies, and certain other contractual ADP support services unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

WARRANTY EXCLUSION AND LIMITATION OF DAMAGES (1981 MAY)

Except as expressly set forth in writing in this agreement, or except as provided in the clause entitled "Commitments, Warranties, and Representations," if applicable, and except for the implied warranty of merchantability, there are no warranties expressed or implied. In no event will the Contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, Section 2-715, in effect in the District of Columbia as of January 1, 1973; i.e., consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

7-2302.2 *Contractor Representation.* The following clause shall be used in all solicitations and contracts for ADPE when the Government's requirement is set forth in the form of a data system specification and the value of the contract is expected to exceed $100,000.

CONTRACTOR REPRESENTATION (1981 MAY)

Unless the Contractor expressly states otherwise in his proposal, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the system proposed is capable of meeting those requirements. However, once the functions have been demonstrated or put to use on the delivered system, Contractor responsibility under this clause ceases. In the event of any inconsistency between the detailed specifications and the functional specification contained in the solicitation, the former will control.

(End of clause)

The invoice or voucher, if proper, shall be approved by the TCO by noting thereon the following:

Payment in the amount of $.....approved.

8-213.2 *Final Payment.*

(a) *Negotiated Settlement.* Upon execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by Determination.* In the event of a settlement by determination:

(i) if the contractor has not appealed the determination a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment; or

(ii) if the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to (i) above may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination. Interest may, however, be allowed on successful contractor appeals to the contracting officer's determination in accordance with the Payment of Interest on Contractors' Claims clause in 7-104.82.

8-214 Cost Principles. The cost principles and procedures set forth in the applicable Part of Section XV shall, subject to the general policies set forth in 8-301, (i) be used in claiming, negotiating, or determining costs relevant to termination settlements under fixed price and cost reimbursement type contracts with other than educational institutions; and (ii) be a guide for the negotiation of settlements under fixed price or cost reimbursement type contracts for experimental, developmental or research work with educational institutions (but see 15-103(iii)).

8-215 Settlement of Unadjusted Contract Changes.

(a) Prior to settlement of a completely terminated contract, the TCO shall obtain from the purchasing office a list of all unadjusted contract changes pertaining thereto. The TCO shall settle, as part of final settlement, all unadjusted contract changes after obtaining the recommendations of the purchasing office concerning such changes.

(b) When the contract has been partially terminated, any outstanding unadjusted contract changes will be handled by the purchasing office. However, delegation may be made by the PCO to the TCO.

8-216 Terminated Contracts With Canadian Commercial Corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (i) the Letter of Agreement between the Department of Defence Production (Canada) and the United States Department of Defense (6-1401(a)); (ii) policies in Section VI, Part 5, and Section VIII; and (iii) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination claim of Canadian Commercial Corporation shall be submitted in the form prescribed in 8-802, and shall reflect the amount of settlements with subcontractors. The letter transmitting the claim shall certify that (i) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (ii) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of 8-210 and 8-805.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to 6-504.3. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corporation to the TCO for screening in accordance with the provisions of 24-205. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination claims submitted by United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DACSR, Cleveland) for settlement in accordance with this Section and Section XXIV. Upon completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination claim submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

8-217 Settlement of Terminated Contracts With Incentive Provisions.

(a) *FPI Contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (i) of the clause in 7-108.1

(1) *Partial Termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (i) of the clause in 7-108.1 and paragraph (k) of the clause in 7-108.2. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbur-

(1) technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in a Government contract or subcontract;

(2) technical data necessary to enable others to manufacture end-items, components and modifications, or to enable them to perform processes, when the end-items, components, modifications or processes have been, or are being, developed under Government contracts or subcontracts in which experimental, developmental or research work was specified as an element of contract performance, except technical data pertaining to items, components or processes developed at private expense;

(3) technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(4) technical data pertaining to end-items, components or processes, prepared or required to be delivered under any Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(5) manuals or instructional materials prepared or required to be delivered under a Government contract or subcontract for installation, operation, maintenance or training purposes; and

(6) technical data which is in the public domain or has been or is normally released or disclosed by the contractor or subcontractor without restriction on further disclosure. "In the public domain" means available to the public without copyright or other restriction of any kind.

(c) *Limited Rights Technical Data.* Except as provided in (b) above, unpublished technical data pertaining to items, components or processes developed at private expense will be acquired with limited rights, provided that the data is identified as limited rights data in accordance with paragraph (b)(2) of the clause in 7-104.9(a). Unpublished, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure.

(It should be clearly understood that the above statement of policy is a recital of rights to be acquired in technical data. Neither the foregoing statement of data rights policy, nor its implementing paragraph (b)(1) and (2) of the clause in 7-104.9(a), establishes data requirements for a particular contract. It should also be noted that technical data pertaining to items, components or processes developed at private expense may be called for, required, or otherwise furnished under (b)(1), (3), (4), (5) and (6) above and, as such, it will be acquired with unlimited rights. Contract clauses and the schedule establish the form and type of data to be furnished; the categories into which such technical data fall, determine the rights to be obtained by the Government to use or publish such data.)

(d) *Predetermination of Rights in Technical Data.*

(1)(a) When the Government needs technical data with unlimited rights, any data which the offeror intends to deliver with limited rights pursuant to (c) above should be identified prior to contract award, if feasible, and an agreement with respect thereto shall be incorporated in the contract. This procedure is called predetermination of rights in technical data.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36069

(b) The procedure may be initiated by the contracting officer or an offeror during the negotiation of a negotiated contract. In order to be productive, the procedure should apply only to that technical data for which rights may practicably be identified. Although the agreement may also cover technical data to be delivered with unlimited rights, in no case shall the procedure be used to require the contractor to furnish, with unlimited rights, data which he is entitled to furnish with limited rights under the policy in (c) above. The contracting officer shall consult his counsel as fully as possible in determining whether to use the procedure and in connection with the various steps of the procedure.

(2) Any agreements reached shall be incorporated in the Schedule of the contract directly or by reference and shall describe specifically the technical data which may be furnished with limited rights pursuant to (c) above. The contracting officer may, however, review the data asserted to be limited rights data to determine whether to invoke the procedures of (f) below to negotiate to purchase unlimited rights in any of the data, or adopt some alternative such as to:

(i) delete or modify the requirement for the data in which the Government would need unlimited rights if it were ordered, or

(ii) modify the specifications so as not to require or permit the use of the item, component or process covered by the limited rights data, or

(iii) include a contractual option to acquire unlimited rights.

(3) When the predetermination of rights in data procedure is to be used, include the provision in 7-2003.61 in the Request for Proposals.

(4) If completion of predetermination proves impracticable before award, or if contractual requirements relating to design or data items are changed during the course of a contract, an appropriate provision shall be included in the contract, requiring the contractor to complete the identification of limited rights with respect to that data listed in the solicitation for which predetermination was proposed, or to identify limited rights data relating to the changed requirements.

(e) *Subcontracts.* It is the policy of the Department of Defense that prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the technical data of their subcontractors for themselves. Accordingly, a subcontractor who would have the right pursuant to (c) above to furnish technical data with limited rights, may furnish such limited rights data directly to the Government rather than through the prime contractor.

(f) *Specific Acquisition of Unlimited Rights in Technical Data.*

(1) Notwithstanding (c) above or any other provision of this Part, the Government may acquire unlimited rights in any limited rights technical data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such unlimited rights in technical data shall be stated in the contract schedule as a separate item and shall be separately priced. Unlimited rights in technical data shall not be acquired under this paragraph unless it is determined after a finding upon a documented record that:

(i) there is a clear need for reprocurement of the item, component or process to which the technical data pertains;

(c) *Marking of Technical Data.*

(1) Technical data delivered to the Government pursuant to any contract requirement shall be marked with the number of the prime contract, except as provided in 9-605(b), and the name of the contractor and any subcontractor who generated the data. Each piece of data submitted with limited rights shall also be marked with:

(i) the authorized restrictive legend,

(ii) an indication (for example, by circling, underscoring, or a note) of that portion of the piece of data to which the legend is applicable, and

(iii) an explanation of the indication used to identify limited rights data.

The Government shall include such identifying markings on all reproductions thereof, unless the Government cancels such markings pursuant to (c)(2), (d)(3) or (d)(4) below.

(2) The contractor has the responsibility to assure that no restrictive markings are placed on technical data except in accordance with the "Rights in Technical Data and Computer Software" clause in 7-104.9(a). Copyright notices as specified in Title 17 United States Code, Sections 401 and 402, are not considered "restrictive markings." When the clause in 7-104.9(a) is required by 9-203(a), the "Restrictive Markings on Technical Data" clause in 7-104.9(p) shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed periodically by the Contract Administration Office. In addition to the rights afforded to the Government by the clause in 7-104.9(p), the following actions are available to insure proper marking of technical data:

(i) The procedures in paragraph (d), "Removal of Unauthorized Markings," of the clause in 7-104.9(a) may be invoked if the contractor fails to follow procedures required by the clause in 7-104.9(p) or fails to correct deficiencies within a specified time.

(ii) Failure to follow proper marking procedures may also be deemed to render technical data nonconforming and subject to 14-406 and to withholding of payments under the "Technical Data—Withholding of Payments" clause.

(iii) When a pre-award survey is requested by the purchasing office, the quality assurance review shall include as an item of special inquiry an examination of the prospective contractor's procedures for complying with the "Restrictive markings on Technical Data" clause.

(iv) The contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause shall be reviewed when holding post-award conferences pursuant to Section I, Part 18.

(d) *Unmarked or Improperly Marked Technical Data.*

(1) The Government shall have the right to require the contractor to furnish clear and convincing evidence of the propriety of any restrictive markings used by the contractor on data furnished to the Government under contract.

Part 6—Rights in Computer Software Acquired Under Contract

9-600 Scope of Part

(a) This Part sets forth the policies, instructions, and procedures pertaining to the acquisition of rights to use, duplicate, and disclose computer software. For the purpose of this Part, computer software consists of computer programs and computer data bases. This Part 6 shall apply to computer programs and computer data bases exclusively. Computer software documentation relating to a computer program or a computer data base is "*technical data*" to which Part 2 is applicable.

(b) This Part relates only to the rights to be acquired in software and not to the establishment of requirements. For information concerning requirements for and the acquisition of computer software, see Part 5 and the following:

DoD Directive 4105.55, "*Selection and Acquisition of Automatic Data Processing Resources*," May 19, 1972.

DoD Directive 5000.19-L, Volume II, "*Acquisition Management Systems and Data Requirements Control List*."

DoD Instruction 4105.65, "*Acquisition of Automatic Data Processing Computer Programs and Related Services*," June 29, 1970.

(c) Rights in computer software acquired under GSA authorized ADP Schedule Pricelist contracts are governed by the terms of those contracts.

9-601 Definitions. For the purpose of this Part, the following terms have the meanings indicated:

(a) *Data* - See 9-201(a).

(b) *Technical Data* - See 9-201(b).

(c) *Computer* - A data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

(d) *Computer Software* - Computer programs and computer data bases.

(e) *Computer Program* - A series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

(f) *Computer Data Base* - A collection of data in a form capable of being processed and operated on by a computer.

(g) *Computer Software Documentation* - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(h) *Unlimited Rights* - See 9-201(d).

(i) *Limited Rights* - See 9-201(c).

(j) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

(i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) copy computer programs for safekeeping (archives) or backup purposes; and

(iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights;

and in addition, any other specific rights not inconsistent therewith listed or described in the contract or described in a license or agreement made a part of the contract.

(k) *Commercial Computer Software* - Computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

9-602 Policy.

(a) The Government shall have unlimited rights in:

(1) computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government, (ii) information in which the Government has unlimited rights, or (iii) information which is in the public domain;

(4) computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software, or

(5) computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations 36671

data bases developed at private expense. As a minimum, however, the Government shall have the rights in 9-601(j)(i) through (v).

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see 9-411.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in Part 2 of this Section, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in paragraph (b)(3)(B) of the clause in 7-104.9(a).

9-603 Procedures.

(a) Except as provided in 7-104.9(n)(2), any computer program or computer data base to be purchased under a contract shall be listed on the *Contract Data Requirements List* (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs or data bases, the writing of implementation programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(b) The "*Rights in Technical Data and Computer Software*" clause in 7-104.9(a) shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause in 7-104.9(a) is required, the provision in 7-2003.76 shall be included in the solicitation.

(c) Contracts under which computer software developed at private expense is procured or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being procured. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights of 9-602(c) are provided in the *Rights in Technical Data and Computer Software* clause, and need not be included in the recital.

(d) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(e) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

9-604 Deviations. All requests for deviations from this Part 6 shall be submitted to the ASPR Committee in accordance with the procedures in 1-109.3.

9-605 Computer Software Subject to Restricted Rights.

(a) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in 9-602(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(b) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to
restrictions stated in Contract No.....
with ..... (*Name of Contractor*).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (b)(3)(B) of the Rights in Technical Data and Computer Software clause in DAR 7-104.9(a)", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 9-606.

(c) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(d) Except as provided in (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(e) All markings, (notice, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(f) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

9-606 Unmarked or Improperly Marked Computer Software.

(a) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(b) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at his own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(c) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

9-607 Contracts With Foreign Sources to be Performed Outside the United States. (See 9-206.)

12-1005.10 *Termination*. See paragraph (i) of 7-1903.41(a).

12-1005.11 *Cooperation With the Department of Labor*. The contracting officer shall cooperate with representatives of the Department of Labor in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department of Labor. When requested, agencies shall furnish to the Administrator any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract services. Violations apparent to the contracting agency and complaints received shall be promptly referred in writing to the appropriate regional office of the Department of Labor. In no event shall complaints by employees be disclosed to the employer.

12-1006 Hearings. A successor contractor's obligation (see 12-1001(ii)) cannot be avoided unless it is found after a hearing that such bargained for wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality. Such hearings may be requested by any interested party, including the contractor, a union, or the contracting agency.

12-1007 Procedures for Evaluating Professional Employee Compensation for Service Contracts.

12-1007.1 *Purpose*. The Service Contract Act of 1965, as amended, was enacted to ensure that blue collar and some white collar workers are fairly compensated by contractors providing contract services to the Government. It does not apply, however, to professional employees. This subpart provides policies and procedures to be used when contracting for services which include a meaningful number of professional employees not covered under the Service Contract Act.

12-1007.2 *Policy*. It is the policy of the Federal Government that all service employees, including professional employees, employed by contractors providing services to the U.S. Government be fairly and properly compensated.

12-1007.3 *Applicability*. The provisions in 7-2003.78 and 7-2003.79 shall apply when all of the following conditions are present:

(i) the principal purpose of the proposed contract is to furnish services in the United States;
(ii) the proposed contract will be negotiated;
(iii) there are a meaningful number of professional employees who will be employed by the contractor to perform the service; and
(iv) the proposed contract will be in excess of $250,000.

12-1007.4 *Definition of Professional Employee*. The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions that have a recognized status and that are based on the acquirement of professional knowledge through prolonged study. Title 29, Part 541, Code of Federal Regulations, defines the term "professional employee" and provides a listing of occupations generally considered to be held by professionals.

GOVERNMENT PROPERTY

Upon notification of availability by DIPEC, a DD Form 1419 will be submitted to DIPEC for each item accepted by the requestor. However, if DIPEC does not have the item available, or cannot furnish the item within the time specified by the requestor, DIPEC will furnish a statement of nonavailability including a certificate number. This statement will be the official Certificate of Nonavailability and will confirm that the plant equipment item has been screened against the idle inventory.

(h) The proposed acquisition of automatic data processing equipment as defined in 1-201.29 shall be: (i) submitted through the Administrative Contracting Officer to Headquarters, Defense Logistics Agency, ATTN: Defense ADP Resource Office (DARO), Cameron Station, Alexandria, VA 22314, in accordance with DOD Manual 4160.19; and (ii) approved in accordance with 4-1104.13(a)(2).

13-302 Securing Approval for Facilities Projects.

(a) The Secretaries of the Military Departments or their designees and the Directors of Defense Agencies may approve requests for Government-owned facilities projects if—

(i) the facilities projects that are funded from procurement appropriations will be approved on a location basis and shall not exceed $5 million for all property efforts (expansion, modernization, rehabilitation, etc.) during 1 fiscal year;

(ii) it is a research and development-funded project that will not exceed $1 million; or

CONTRACT COST PRINCIPLES AND PROCEDURES

property may be agreed upon and allowed (but see 15-107). In determining this charge, consideration should be given to cost, total estimated useful life at time of negotiation, effect of any increased maintenance charges or decreased efficiency due to age and the amount of depreciation, if any, previously charged to Government contracts or subcontracts.

(j) Cost Accounting Standard (CAS) 404 *Capitalization of Tangible Assets* is applicable to those assets which are acquired by means of a "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB). Compliance with CAS 404 and FAS-13 requires that such leased assets (captial lease) be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, both for financial and cost accounting purposes. Therefore, any leased assets whether leased prior to, on, or after 1 January 1977, which are capitalized prior to, on, or after 1 January 1977 under the provisions of FAS-13, are subject to the provisions on depreciation for tangible capital assets enunciated in this cost principle (15-205.9) — they are not subject to the provisions on rental costs set forth in 15-205.34. Existing leases entered into prior to 1 January 1977, which the contractor elects not to capitalize until 1 January 1981 as provided in FAS-13 will be subject to the provisions of rental costs set forth in 15-205.34 (1 July 1976) until such date as they are capitalized. The provisions of this paragraph (15-205.9(j)) apply whether or not the contractor is subject to CAS 404. The standards of Financial Accounting and Reporting set forth in FAS-13 are incorporated into this cost principle and shall govern in the application of this principle except when the provisions of subparagraphs (1), (2), and (3) set forth below conflict with the standards in FAS-13. In this event, the provisions of subparagraphs (1), (2), and (3) below shall govern.

(1) *Sales and Leaseback.* Rental costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed had he retained title to the property.

(2) *Leases Between Related Parties.* Capital leases for all real and personal property which is leased from any division, subsidiary, or affiliate of the contractor under common control shall be subject to the provisions of this paragraph 15-205.9(j). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, the depreciation charges shall not be allowed in excess of those which would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

(3) Assets acquired under leases which the contractor must capitalize in accordance with FAS-13 shall not be treated as purchased assets for contract costing purposes if the leases are covered by the provisions of 15-205.34(f).

15-205.10 *Employee Morale, Health, Welfare and Food Service and Dormitory Costs and Credits.* (CWAS)

(a) Employee morale, health and welfare activities are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph 15-205.10, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Except as limited by (c) below, the aggregate of costs incurred on account of all activities mentioned in (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under (b) above, only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at price or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except that a loss may be allowed to the extent the contractor can demonstrate that unusual circumstances exist (*e.g.*, (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(d) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plan, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service (but see (e)).

(e) Contributions by the contractor to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under (b) above only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the contractor directly.

15-205.11 *Entertainment Costs.* (CWAS-NA) Costs of amusement, diversion, social activities and incidental costs relating thereto, such as meals, lodging,

lowable to the extent that such costs are incurred pursuant to a well managed recruitment program. When the contractor uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Cost of help-wanted advertising is unallowable if the advertising:

(1) is for other than for personnel required for the performance of obligations under a defense contract (see 15-205.1); (CWAS-NA)

(2) does not describe specific positions or classes of positions; (CWAS-NA)

(3) is excessive in relation to the number and importance of the positions, or in relation to the practices of the industry; (CWAS)

(4) includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities; (CWAS-NA)

(5) is designed to "pirate" personnel from another defense contractor; (CWAS-NA) and

(6) includes color (in publications). (CWAS)

(c) (CWAS-NA) Costs of excessive salaries, fringe benefits and special emoluments that have been offered to prospective employees, designed to "pirate" personnel from another defense contractor, or in excess of the standard practices in the industry, are unallowable.

(d) (CWAS-NA) Relocation costs incurred incident to recruitment of new employees are subject to 15-205.25. When such costs have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the contractor shall be required to refund or credit such relocation costs to the Government. However, costs of travel to an overseas location shall be considered travel costs in accordance with 15-205.46 and not relocation costs for the purpose of this subparagraph, if (i) dependents are not permitted at that location for any reason, and (ii) such costs do not include costs of transporting household goods.

15-205.34 *Rental Costs (Including Sale and Leaseback of Property).* (CWAS)

(a) This paragraph 15-205.34 is applicable to the cost of renting or leasing property, real and personal, acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB), except automatic data processing equipment (ADPE). (See 15-205.48.) Compliance with 15-205.9(j) requires that assets acquired by means of "capital leases" as defined in the aforementioned (FAS-13) shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges (but see (f) below).

The next page is: 15:36

36676 Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

(b) Rental costs under operating leases are allowable to the extent that the rates are reasonable at the time of the decision to lease in light of such factors as rental costs of comparable property, if any, and market conditions in the area, the type, life expectancy, condition, and value of property leased, alternatives available, and other provisions of the agreement.

(c) Rental costs under a sale and leaseback arrangement shall be allowable only up to that amount the contractor would be allowed had he retained title to the property.

(d) Charges in the nature of rent between any divisions, subsidiaries, or organization under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Section XV); *provided* that no part of such costs shall duplicate any other allowed costs. However, rental cost of personal property, which is leased from any division, subsidiary, or affiliate of the contractor under common control, which has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with (b) above.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in 15-205.42(e).

(f) Rental costs under leases entered into prior to March 1, 1970, are allowable for the remaining term of the lease (excluding options not exercised prior to March 1, 1970) to the extent they would have been allowable under 15-205.34 dated January 1, 1969.

15-205.35 *Independent Research and Development Costs.*

(a) *Definitions.* A contractor's independent research and development effort (IR&D) is that technical effort which is not sponsored by, or required in performance of, a contract or grant and which consists of projects falling within the following three areas: (i) basic and applied research, (ii) development, and (iii) systems and other concept formulation studies. IR&D effort shall not include technical effort expended in the development and preparation of technical data specifically to support the submission of a bid or proposal. For the purposes of this paragraph:

(c) DD Form 783 (Royalty Report (Foreign and Domestic)) is approved for use as the separate schedule required by DD Form 633.

16-206.2 *Contract Pricing Proposal Supporting Schedules* may be devised by contracting offices to require such supporting data to the foregoing forms as is considered necessary and reasonable through knowledge of industry, company or commodity practices.

16-207 Reserved.

16-208 Weighted Guidelines Profit/Fee Objective (DD Form 1547).

16-208.1 *General.* Weighted Guidelines Profit/Fee Objective (DD Form 1547) is to be used, as appropriate, to facilitate calculation of the Weighted Guidelines Profit/Fee Objective (see 3-808.2).

16-208.2 *Conditions for Use.* DD Form 1547 may be used in conjunction with the Record of Price Negotiation required by 3-811(b), *provided* that the rationale used in assigning the various rates is fully documented.

PROCUREMENT FORMS

Part 3—Purchase and Delivery Order Forms

16-300 Scope of Part. This Part prescribes forms for use (i) when purchases are authorized or required to be made by the purchase order or imprest fund method, (ii) as delivery orders, and (iii) as order against basic ordering agreements.

16-301 Receipt for Cash—Subvoucher (Standard Form 1165). Standard Form 1165 may be used in connection with procurements by the imprest fund (petty cash) method in accordance with 3-607.

16-302 Purchase Order — Invoice — Voucher (Standard Form 44). Standard Form 44 is authorized for use to accomplish small purchases in accordance with 3-608.9.

16-303 Order for Supplies or Services/Request for Quotations, (DD Forms 1155, 1155r, 1155r-1, and 1155c-1). Order for Supplies or Services/Request for Quotations, DD Form 1155 series, shall be used to accomplish small purchases in accordance with 3-608 and 16-402 and Blanket Purchase Agreements in accordance with 3-605, and may be used to place calls against Blanket Purchase Agreements in accordance with 3-605.5 and orders against basic ordering agreements in accordance with 3-410.2(a). Pending revision of the 1 MAR 1978 edition of DD Form 1155r, the *Fast Payment Procedure* clause in 7-104.84 shall be substituted for paragraph 15 of the form.

PROCUREMENT MANAGEMENT REPORTING SYSTEM

21-108 Item 2, Contract Number. Enter only Department of Defense contract numbers in Subitem A; contract numbers for all other Federal agencies shall be entered in Subitem B. For orders under contracts awarded by other Federal Agencies (*i.e.*, GSA Federal Supply Schedule, Government Printing Office, and Veterans Administration contracts), enter the Federal Agencies' contract number in Subitem B. For orders covering direct purchases from other Federal agencies, such as Federal Prison Industries, Tennessee Valley Authority, Veterans Administration, Treasury, etc., enter the Defense delivery order number in Subitem A, *e.g.*, DAAH01-78-F0260. If entry is in Subitem A, then Subitem B must be blank, and vice versa.

(a) Subitem A(1). Activity - Enter the first six characters of the contract number which identify the activity listed in Appendix N. Activity symbols assigned prior to the initiation of Section XX, Part 2, shall be expressed as a six character symbol. For Army, the five digit fiscal station code shall be prefixed by the letter A, thus 01-002 for Anniston Army Depot shall be reported as A01002. Navy symbols of less than five digits shall be prefixed by zeros, *e.g.*, 383 for ASO shall be reported as N00383.

(b) Subitem A(2). FY - Enter the last two digits of the fiscal year in which the basic contract number was initially assigned (not the fiscal year of the immediate action); *e.g.*, 78 for fiscal year 1978. If the fiscal year is not known for contract numbers assigned prior to the initiation of Section XX, Part 2, or cannot be ascertained after a reasonable search, enter "XX".

(c) Subitem A(3). Serial No. - Enter as a five-position entry, the serial number assigned to the contract. For serial numbers assigned in accordance with Section XX, Part 2, the first character shall be type of instrument as described in 20-203.1(iii). The remaining four characters shall be the serial number assigned in accordance with 20-203.1(iv). For other contract numbers, *i.e.*, those numbered under exceptions permitted by 20-201, the serial number also shall consist of five characters, *e.g.*, 00001, 00124, 01356, 71284, etc. If a serial number has not been assigned, enter five zeros. Do not enter other supplementary procurement instrument identification numbers in Subitem A(3); such numbers shall be entered in Item 4.

(d) Subitem B. Other - For orders under contracts awarded by other Federal agencies, enter the contract number of the Federal Agency as it appears in the contractual instrument; *e.g.*, GS-00S-27773, GP-16251A, V979P-2048A, etc.

21-109 Item 3, Correction of Previously Reported DD Form 350.

(a) If it is necessary to correct an error on a previously reported DD Form 350, two DD Forms 350 are required.

(1) *Code 1 Corrected Entry.* Enter the correct data in all items. Entries in Item 1A and Item 24 shall be the same as those reported on the report being corrected, except when such items are the subject of the corrections being made.

(2) *Code 2 Reversing Entry.* Enter data in all items exactly as in the incorrect report except that the dollar amount shown in item 25 shall be the reverse of the amount originally reported; that is, if the amount of the incorrect report was a debit, the amount of the reversing entry shall be a credit and vice versa. Entries in Item 1A and Item 24 shall always be the same as those reported on the report being corrected.

(b) The item numbers being corrected will be noted on both the reversing and correcting reports in the spaces provided.

21-110 Item 4, Modification Number and Other Identification. Enter the supplementary procurement instrument identification numbers assigned in accordance with 20-204 for letter contract modifications, orders against indefinite delivery type contracts and basic ordering agreements, contract change notifications, change orders, supplemental agreements, and other modifying actions. For those numbered under exceptions permitted by 20-201, enter the identification and number such as Mod. 35; C.O. No. 2; *etc.*

21-111 Item 5, Purchasing Office. Enter sufficient detail to establish the identity of the purchasing office submitting the report. Enter in the Item 5 code space, the number or symbol assigned to the purchasing office in accordance with DoD Procurement Coding Manual, Volume III.

21-111.1 *Item 5A, Small Disadvantaged Business Concern* (see 1-701.2).

(a) Enter Code A if the award was made to a small disadvantaged business concern in accordance with the representation required in 1-707.3(f).

NOTE: If Code A is entered, the contractor designated in Item 6 must be small business.

(b) Enter one of Codes B through F for all other awards.

(i) Enter Code B if there is no known small disadvantaged source. Also enter Code B for orders under contracts awarded by other Federal Agencies for which data are not readily available.

(ii) Enter Code C if there was a known small disadvantaged business concern but it was not solicited for a bid or proposal.

(iii) Enter Code D if a small disadvantaged business concern was solicited, but no bid or proposal was received from such concern, or the concern did not offer sufficient quantity to cover total requirements but received award for that portion bid on.

(iv) Enter Code E if a small disadvantaged business concern was solicited but the low bid or proposal was not from such firm.

(v) Enter Code F if a small disadvantaged business concern was solicited, but was not awarded the contract for reasons other than those coded B, C, D, or E.

(i) all contracts negotiated under the authority of 10 U.S.C. 2304(a)(11), Experimental, Development, or Research Work:

(ii) most but not all, contracts negotiated under 10 U.S.C. 2304(a)(5), Services of Educational Institutions;

(iii) all contracts funded by Research, Development, Test and Evaluation appropriations; and

(iv) all contracts where the purpose is for research and development even though not authorized under 10 U.S.C. 2304 (a) (5) or (11), or funded by RDT & E appropriations.

However, do not assign RDTE codes for the procurement (including rental or lease) of equipment or housekeeping supplies/services separately purchased in support of RDTE work. This exception refers to the purchase of equipment upon which RDTE work will be performed, test equipment, office equipment, structural steel plates, etc.; or services such as construction, maintenance of facilities or equipment, utilities, rental of ADP equipment, guard services, etc. Generally procurement of services or supplies that are incidental to the fulfillment of RDTE work, *but does not require contractor RDTE performance*, shall be coded in accordance with Parts B and C, Section 1 of the coding manual, even though such purchases are in support of RDTE work and RDTE funds are cited. In no case shall RDTE codes be assigned for orders under GSA Federal Supply Schedule contracts. The purchase request, as prepared by the research and development technical sections, will provide the necessary information to enable personnel preparing the DD Form 350 to properly identify the RDTE code.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

(b) *Services.* All services, except RDTE actions, shall be coded in accordance with Part B, Section I of the coding manual. Each category is assigned a series of four-digit codes for specific types of services and construction.

(c) *Supply.* Procurement of supply items shall be assigned a Federal Supply Classification (all numeric) code from Part C, Section I of Volume I of the Department of Defense Procurement Coding Manual. The Department of Defense Federal Supply Classification Cataloging Handbooks H2-1, H2-2, and H2-3 also may be used as a reference in identifying the correct four-digit code.

21-117 Item 10B, System or Equipment Code.

(a) Enter the code for weapons system or equipment in accordance with Volume I of the Department of Defense Procurement Coding Manual (Section II). If a weapons system or equipment code is not applicable, enter three zeros, *i.e.*, 000.

(b) Codes in Section II are not applicable to construction, subsistence, clothing/textiles, or petroleum, and generally have been assigned to all production end items whose annual programmed procurement is $2,000,000 or more. Accordingly, if a code cannot be found for a DD Form 350 action of $2,000,000 or more, which is for an end item or a component identifiable to an end item, a specific request for a code together with the applicable DD Form 350 should be addressed to the appropriate organization specified in 21-103(b). Submission of the DD Form 350 will not be delayed pending resolution of the inquiry. This reporting requirement is not applicable to the Defense Logistics Agency.

21-118 Item 10C, DD Claimant Program Number. Enter the appropriate DDCP number that identifies the commodity described in Item 11. Claimant Program Numbers are defined in Volume I of the Department of Defense Procurement Coding Manual (Section III). If the description in Item 11 is for research and development, the objective of the research and development shall control the DDCP number to be entered; *e.g.*, if the objective of the research and development is a guided missile, enter Code A-2. If the description in Item 11 is for research that cannot be identified with a particular claimant program, enter Code S-1. Contracts for ship repair, IRAN and modification of aircraft, overhaul of engines, and like maintenance, repair or modification services shall be identified with a particular claimant program where possible. Equipment rental (including rental of automatic data processing equipment (as defined at 4-1102.1)) and utility services shall be coded S-1. If a particular claimant program cannot be identified, enter Code S-1 for services and C9E for supplies or equipment.

21-119 Item 11, Description of Commodity or Service.

(a) Enter brief description of commodity or service. Specify end use of item and model numbers where possible, *e.g.*, M-16 Rifle; B-52 Aircraft; A-4E Aircraft, Radio Set AN/FRT-51. When the description of a commodity or service is classified, enter only the word "Classified"; however, do not specify "Classified" if a code name, such as Minuteman, Polaris, Typhon, Jupiter, etc., or an identifying program number, *e.g.*, WS-107A, can be used without classifying the report.

(b) When an increase or decrease in funds is the result of price redetermination, change in fixed-fee, contract termination, engineering change, overrun, accelerated amortization, or continuation of research and development, specify the equipment or service acquired under the basic contract, such as "Price Redeter-

forth as 10-1 through 10-18 representing (i) through (xviii). However, Negotiation Exception 10-18 pertains to purchases under Foreign Military Sales arrangement which for reporting purposes does not require an entry in Item 17; therefore, codes 10-18 will not be used. Codes 10-19 through 10-25 may be used for those procurement circumstances which are authorized in Departmental instructions and for additional procurement circumstances later approved and published in the DAR. Enter Code 10-26 if none of the procurement circumstances set forth in 3-210.2 or Departmental instructions is applicable.

(h) Enter Code 17A when reporting Joint Small Business Set-Asides pursuant to 15 U.S.C. 644 (P.L. 85-536), *i.e.*, set-asides agreed to jointly by the Small Business Administration representative and the Department of Defense contracting officer. (See definition of set-aside for Code 1B above.) Enter Code 17B when any other public law authorized the negotiation, and in the space provided specify the number of the public law or U.S. Code citation. For repurchase actions following default, where no other negotiation authority is utilized, enter Code 17B and specify the words "Repurchase Action".

21-126 Item 18, Extent of Competition in Negotiation.

(a) The purpose of this item is to provide statistics reflecting the extent and kind of competition obtained under contracts executed pursuant to the negotiation authorities of the DAR. Detailed information with respect to the presence or absence of competition in negotiated procurement is of vital importance to the Department of Defense. Information obtained from these reports is used throughout the Department for internal management purposes. Additionally, this information is provided to various Committees of the Congress on a continuing basis. It is critically important that this item receive careful attention by reporting activities to ensure its completeness and accuracy.

(b) Provision is made to record the extent of competition as follows:

(i) price competition;
(ii) design, technical, or other competition;
(iii) follow-on actions after price competition;
(iv) follow-on actions after technical or other competition;
(v) other noncompetitive actions;
(vi) catalog or market price actions; and
(vii) not considered for competition.

(c) The following contract actions are exempt from reporting the extent of competition and shall be entered as Code 7:

(i) awards for brand name items for commissary resale;
(ii) awards to nonprofit institutions;
(iii) awards to regulated monopolies for utilities where the price negotiated is based on prices set by law or regulation; and
(iv) awards made pursuant to Section 8(a), Small Business Act (15 U.S.C. 637(a)).

(d) (1) A contract shall be reported as "price competition" if offers were solicited and received from at least two responsible offerors capable of satisfying the Government's requirements wholly or partially, and the award or awards were made to the offeror or offerors submitting the lowest evaluated prices. However, a contract may also be reported as "price competition" even though only one offer is received when offers are solicited from at least two responsible offerors who normally contend for contracts for the same or similar items.

(2) Procurements shall not be reported as "price competition" where only one responsive offer was received and the solicitation was restricted to a prime contractor and his vendor for that item.

(3) Multiple awards in such areas as subsistence, clothing and equipage, and other commodities where several awards normally result from one solicitation may be reported as "price competition," even though the total quantity of the solicitation is not awarded, if in the judgment of the contracting officer there are sufficient facts to support a valid finding of "price competition."

(4) Transactions shall not be reported as "price competition" solely on the basis of the number of solicitations made. Contracting officers shall consider the content of the responses to solicitations, the procurement history of the items procured, and other relevant information, and shall exercise sound judgment in the reporting of transactions as "price competition."

(e) Design or technical competition is present when two or more qualified sources of supply are invited to submit design or technical proposals, with the subsequent contract award based primarily on this factor, rather than on a price basis. Many research and development contracts, and many initial contracts for new military weapons fall into the category of design or technical competition. If some measure of price competition is present but the contract cannot be reported as a "price competition" award consistently with (d) above, the contract should be reported as a "design, technical, or other competition" award.

(f) A follow-on contract means a new procurement (whether placed by a separate new contract or by a supplemental agreement) placed with a particular contractor to continue or augment a specific military program in instances where such placement was necessitated by prior procurement decisions. Incremental yearly buys under multi-year contracts and exercise of options shall not be included in this category, except as provided in (h) below. An example of a follow-on contract is one which by force of circumstances had to be awarded to a contractor who was just completing a research and development contract in the same program. Other examples of follow-on contracts include those for support equipment, maintenance support, technical representatives or spare parts which have been awarded without competition to the contractor because he furnished the original equipment. Follow-on contracts in which the selection of the contractor at the inception of the program was on a competitive basis (*i.e.*, price or design or technical) will be reported as Code 3 or 4 as appropriate. Follow-on contracts in which the selection of the contractor at the inception of the program was on a noncompetitive basis will be reported as Code 5. Nothing in the foregoing should be construed as providing authorization for noncompetitive procurement. DAR provisions requiring either formal advertising or competitive negotiation shall be complied with.

(g) Codes 1 through 7 shall be entered as follows:

(vii) are for purchase of land, or rental or lease of real property.

21-202 Due Date and Distribution.

(a) In addition to instructions given in (b) through (f) below for contracting offices of specified Departments and Agencies, the following instructions are applicable to all contracting offices.

(1) Reports shall be submitted in time to reach the recipient within three (3) working days after the close of each month To meet this due date, contracting offices are authorized to cut off no earlier than the 25th calendar day of the month reported. For the month of September only, the due date is extended by 10 additional calendar days, but the cut-off date must be as of 30 September

(2) Negative reports shall be submitted if a contracting office has not transacted a reportable action during the month.

(3) Letter of transmittal is not required.

(b) *Army* contracting offices shall distribute DD Form 1057 as follows.

(1) The original (except from Engineer Civil Functions contracting offices) shall be forwarded to HQDA (JDHQ-SV-W-P), Washington, D.C. 20310.

(2) Engineer Civil Functions contracting offices shall forward the original to HQDA (DAEN- PRP), Washington, D.C. 20314. A copy is not required for HQDA.

(c) Navy field contracting offices shall forward the original DD Form 1057 to the Head of the Contracting Activity from which contracting authority was received, with the exception of the Navy Aviation Supply Office (ASO) and the Ships Parts Control Center (SPCC). ASO and SPCC shall forward their reports to the Naval Supply System Command Headquarters. Heads of Contracting Activities shall review and correct the feeder reports, prepare a consolidated DD Form 1057 and submit the consolidated report to Headquarters, Naval Material Command, Washington, D. C 20360, Attn: MAT 08C14

(d) *Air Force* contracting offices shall forward the original DD Form 1057 to AFLC/ACOCS, Wright-Patterson AFB, Ohio 45433. Separate reports shall be submitted by each activity which has been determined to be a separate reporting office Air Force contracting offices, except those under AFLC and AFSC shall forward one copy to the appropriate major command headquarters staff contracting office or division.

(e) *Defense Logistics Agency* contracting offices shall forward the original DD Form 1057 to Executive Director, Contracting, Defense Logistics Agency, Cameron Station, Alexandria, VA, 22314, ATTN: DLA-PA.

(f) All other contracting offices of the Department of Defense shall forward the original DD Form 1057 to HQDA (JDHQ-SV-W-P), Washington, D. C. 20310.

(g) Procurement actions of $10,000 or less which are reportable in accordance with 21-201 and are accomplished by contract administration offices shall be handled as follows:

(1) When the contractual instrument is being distributed, a copy shall be clearly annotated "DD Form 1057 Reporting Copy" and shall be forwarded to the appropriate contracting office listed in Appendix N

(2) Contracting offices shall include data for such instruments in their reports on DD Form 1057.

Federal Register / Vol. 46, No. 134 / Tuesday, July 14, 1981 / Rules and Regulations

PROCUREMENT MANAGEMENT REPORTING SYSTEM

21-203 Terms Used. The terms used in DD Form 1057 will, in all cases, have the same meaning as they do for the purpose of preparing DD Form 350. (See Section XXI, Part 1.)

21-204 Heading.

(a) *Reserved.*

(b) *Month Ending*—Enter the year, month and day indicating the ending date of the month reported.

(c) *Contracting Office and Mailing Address*—Enter sufficient detail to establish the identity of the contracting office submitting the report.

(d) *Reporting Office Code*—Enter the code assigned to the contracting office pursuant to Volume III of the DoD Procurement Coding Manual. This is the same code that is used for Item 5 of DD Form 350.

21-204.1 *Number of Actions.*

(a) Only transactions that obligate or deobligate funds shall be counted. Except as provided in (b) below, each call or order under a blanket purchase agreement, imprest fund, requirements type contract, or indefinite delivery indefinite quantity contract shall be counted as an action. A definite quantity indefinite delivery contract shall be counted once at the time of award, and orders under such contracts shall not be counted. If it is not possible to determine the price of an order or call when it is placed, it may be counted when the voucher is paid, but care shall be exercised to avoid double counting of such actions.

(b) For the following transactions, each voucher paid during the report period shall be counted as one action, and no other count shall be reported. (If the voucher is in excess of $10,000, the action shall be reported on DD Form 350 rather than DD Form 1057):

(i) meals and lodging;

(ii) automatic deliveries, such as, bread, milk, and ice cream;

(iii) utilities, such as, electricity, gas, and telephone.

(Headquarters, Naval Facilities Engineering Command, will submit consolidated reports on utilities contracts for all Naval Shore Establishments).

21-204.2 *Dollar Value.* All dollar amounts shall be entered in whole dollars. Do not enter cents. For example, $2,510.10 or $2,510.90 shall be reported as $2,510. Do not enter $2,510.00 or $2,510.-. If the net amount is a decrease, enter the symbol "CR" immediately following the amount to signify a credit entry. Do not enter parentheses or dashes.

21-205 Section A, All Procurement Actions of $10,000 or less.

(a) Enter on Lines 1 through 4 the number and value of actions of $10,000 or less according to type of contractor (*i.e.*, small business, large business, educational and nonprofit institutions), and for work outside the U.S., according to whether the actions were advertised or negotiated.

(b) Report on Line 5*a* orders under GSA Federal Supply Schedules. Orders under Veterans Administration contracts published in GSA Federal Supply Schedules shall be reported on Line 5*b*.

SERVICE CONTRACTS

22-601.2 *Additional Services and Excess Requirements.*

(a) *Excess Requirements.* Excess requirements are those services which exceed the contractors' capabilities available under contracts. When excess requirements exist, they may be obtained by using small purchase procedures (see Section III, Part 6).

(b) *Additional Services.* Additional services include, but are not limited to, attempted pickups or deliveries, handling in and out, hoisting or lowering of articles, drayage to or from residence outside area of performance, extra long carry, carrying of pianos or organs, reweighing, waiting time, special packaging, loading or unloading of railroad cars to include bracing and blocking and unbracing and unblocking as required. At the option of the contracting officer, additional services may be obtained by:

(i) inclusion as items within the contract; *provided*, they are not used in the evaluation of bids (see 22-602(b)); and

(ii) using small purchase procedures (see Section III, Part 6).

Prices for additional services may be predetermined with the contractor or negotiated on a case by case basis.

(c) *Ordering of Additional Services.* Additional services other than attempted pickup or delivery will be performed by the contractor only upon authorization of the contracting officer regardless of the method of purchase. To the maximum extent possible, additional services required incident to an order should be identified prior to placement of the order or during the premove survey when applicable.

22-601.3 *Contract Distribution.* In addition to the distribution requirements of 20-401, one copy of each contract will be furnished as follows:

(a) CONUS Personal Property Shipping Activities forward to the MTMC Personal Property Office having jurisdiction over the respective activity. These offices are: Commander, Military Traffic Management Command, Eastern Area, ATTN: MTE-PP, Bayonne, New Jersey 07002; and Commander, Military Traffic Management Commander, Western Area, ATTN: MTW-PP, Oakland, California 94626.

(b) Personal Property Shipping Activities in the European and Pacific areas forward to the appropriate Military Traffic Management Commander Field Office. Other overseas personal property shipping activities forward to Commander, Military Traffic Management Command, ATTN: MT-PPQ, Washington, D.C. 20315.

22-602 Schedule Formats.

(a) The following schedules shall be inserted in all solicitations for the preparation of personal property for shipment or storage and performing intracity or intra-area movement. When a requirement does not exist for an item or sub-item in a schedule, that item or sub-item number, in its proper numerical sequence, will be indicated and the statement "No Requirement" added.

(b) Within Schedules I (Outbound) and II (Inbound), item numbers have been reserved to permit the contracting officer to include additional items as may be required by local conditions. Overseas activities, except those in Alaska and Hawaii, may modify the schedules when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regula-

tions. All generic terminology, schedule and item numbers in proper sequence shall follow those contained in the basic format. All other modifications, other than (c) below, of schedule format will be processed as a request for deviation in accordance with 1-109.

(c) When it is determined to be in the best interest of the Government to have both outbound and inbound services within a given area of performance furnished by the same contractor, the contracting officer may modify the schedule format to combine both services in a single schedule; however, items shall follow the same sequential order as in the basic format.

22-602.1 *Schedule of Items.*

(NOTE: Wherever FED SPEC PPP-B-580 containers are specified in this Schedule, containers listed in MTMC Pamphlet 55-12, dated 12 October 1978, may be substituted.)

SCHEDULE I

OUTBOUND SERVICES

Item 1. *Complete Service—Outbound (HHGs).* Services shall include premove survey, servicing of appliances, disassembly of furniture if required, preliminary packing, inventorying, tagging, wrapping, padding, packing and bracing of household goods in Government owned and furnished shipping containers (*Shipping Container FED SPEC PPP-B-580 or Air Cargo*) at owner's residence, or at Contractor's facility when ordered by the Contracting Officer, properly securing and sealing for shipment, weighing, obliterating old markings, marking, strapping, and drayage of the container within area of performance. Service shall include loading of shipments on line-haul carrier's equipment at the Contractor's facility. When containers will not accommodate all articles of any one lot, loose articles shall be packed in the said containers. Before any over-packed articles are placed therein. Overflow articles which require packing and containerization shall be paid for under *Item 3.*

Area .....

	Est Annual Qty	Unit	Unit Price	Total
a. At owner's residence:				
(1) Container, FED SPEC PPP-B-580	_____	GCWT	_____	_____
(2) Air Cargo Container	_____	GCWT	_____	_____
b. At Contractor's Facility:				
(1) Container, FED SPEC PPP-B-580	_____	GCWT	_____	_____
(2) Air Cargo Container	_____	GCWT	_____	_____

(*Repeat a. and b. above for additional areas as needed.*)

Item 2. *Outbound (HHGs From Non-Temporary Storage).* Service shall be the same as *Item 1* except that: (i) household goods shall be picked up at a non-temporary storage facility and transported to Contractor's facility; or (ii) household goods shall be delivered to Contractor's facility; and (iii) premove survey, servicing of appliances, preliminary packing and accessorial services shall not be provided. Overflow articles requiring containerization will be paid for under *Item 3.*

Area .....

	Est Annual Qty	Unit	Unit Price	Total
a. Pickup by Contractor:				
(1) Container, FED SPEC PPP-B-580	_____	GCWT	_____	_____
(2) Air Cargo Container	_____	GCWT	_____	_____
b. Delivered to Contractor:				
(1) Container, FED SPEC PPP-B-580	_____	GCWT	_____	_____
(2) Air Cargo Container	_____	GCWT	_____	_____

(*Repeat a. and b. above for additional areas as needed.*)

Item 3. *Complete Service-Outbound (HHGs-Overflow Articles and HHGs Shipments Requiring Other Than PPP-B-580 or Air Cargo Containers).* Service shall be the same as Item 1 or Item 2 except that the loose articles may be drayed to Contractor's facility when ordered by the Contracting Officer for containerization in Government-approved, Contractor-furnished containers.

Area .....

24-204 Scrap.

24-204.1 *General.* Scrap need not be itemized on inventory schedules if (i) the material is physically segregated in the contractor's plant, and (ii) the contractor submits a statement describing the material generally, setting forth its approximate cost, and giving such other information as may be necessary for the plant clearance officer to determine whether the property is scrap. Promptly after the submission of inventory schedules, by the contractor, the plant clearance officer shall review, or cause to be reviewed the contractor's treatment of any items of contractor inventory as scrap. The review shall include a careful examination of the inventory schedules and, in appropriate cases, physical inspection of the property involved. Prior to authorizing disposal of items as scrap, the plant clearance officer shall obtain such approval as may be required.

24-204.2 *Pre-Inventory Scrap Determinations.* The contractor may request the plant clearance officer to make a pre-inventory scrap determination of inventory considered by the contractor to be without value except as scrap. These pre-inventory scrap determinations shall be based on on-site surveys. If the contractor's scrap recommendation is approved, the contractor may make a single descriptive entry on an inventory schedule covering that property and indicating its approximate total cost. If the plant clearance officer determines that any of the property listed by the contractor as scrap is serviceable, usable, or salvable, the contractor shall, in accordance with this determination, submit appropriate inventory schedules. If the determination is made subsequent to the submission of a scrap inventory schedule, the contractor shall be required to submit revised inventory schedules in proper form.

24-204.3 *Segregation.* Property determined to be scrap shall be segregated by the contractor to the extent necessary to assure the highest net proceeds. In appropriate cases, when approved by the plant clearance officer, these sales may be consolidated with the contractor's sales of scrap generated from his other work and, in such cases, the scrap warranty required by 24-204.5 may be waived at the discretion of the plant clearance officer.

24-204.4 *Contractor's Approved Scrap Procedure.*

(a) When a contractor has an approved scrap procedure, certain property may be routinely disposed of in accordance with that procedure and not processed under this Section. Production scrap, as defined in 24-101.20, and production spoilage, may be disposed of through the contractor's approved scrap procedure. In addition, worn, broken, mutilated, or otherwise rejected parts except to overhaul and repair contracts, may be similarly processed with the approval of the plant clearance officer.

(b) A plant clearance case shall not be established for property which is disposed of through the contractor's approved scrap procedure.

(c) The contractor's scrap and salvage procedures, particularly the sales aspects thereof, shall be reviewed by the plant clearance officer prior to its approval by the property administrator. The plant clearance officer shall assure that the procedure contains adequate requirements for inspection and examination of items to be disposed as scrap. When the contractor's approved scrap procedure does not require physical segregation and disposition of Government- owned from contractor-owned scrap, care shall be exercised to assure that a contract change, which generates a large quantity of property, does not result in an inequitable return to the Government. In these cases, a determination shall be made as to whether separate disposition of Government scrap would be appropriate.

(d) Scrap, other than that disposed of through the contractor's approved scrap procedure, shall be reported on appropriate inventory schedules for disposition in accordance with the provisions of this Section.

(e)(1) Silver, gold, platinum, palladium, rhodium, iridium, osmium and ruthenium; scrap bearing such metals; and items containing recoverable quantities thereof will be reported to the Defense Property Disposal Precious Metals Recovery Office (DPDM-R), NWS Earle, Colts Neck, New Jersey, 07722, for disposition instructions.

(2) Precious metals shall be packaged in nonporous, smooth containers in a manner to prevent loss through leakage or damage to the containers. (Glass containers shall *not* be used.) Grindings or sweepings shall not be packaged in paper or wooden containers as loss occurs due to adhesion of particles. Containers shall be marked to show the type of precious metals contained therein.

(3) The shipping document shall indicate the net weight of each item to the nearest ounce (troy or avoirdupois). Shipment shall be made by the most economical means available, consistent with adequate safeguards to prevent loss or theft.

(4) When the determination is made that precious metal recovery is not feasible, the material in (e)(1) above shall be disposed of through normal procedures. The sales return shall not be less than the scrap value of the precious metal(s) contained therein.

24-204.5 *Scrap Warranty.*

(a) If contractor inventory is sold as scrap, including sale to the holding contractor, a scrap warranty in the form outlined in DD Form 1639, Scrap Warranty, shall be included as a special condition of sale, unless the requirement is waived pursuant to (d) below.

screening requirements (see 24-205.1(d)), subject to departmental screening only (see 24-205.1(f)), or contractor inventory which is residual to other required screening, may be subjected to local screening for a period of 15 days prior to the donation screening period provided in 24-207(d) and prior to disposition by sale or abandonment. If duplicate requirements are received, Government activities will have precedence. The feasibility or extent of local area screening shall be determined by the plant clearance officer, based on considerations of quantity, condition and value of the property, and the estimated cost of effecting transfer.

24-205.7 *Packing, Crating, and Handling Services.* The contract administration office shall be responsible for obtaining packing, crating, and handling services. To accelerate plant clearance, appropriate data must be furnished by the transferee and shall be cited in the transfer or shipping document. The document shall not be forwarded to the contract administration office unless the required packing, crating, and handling funding data are furnished, except that funds for movement of IPE under the direction and control of DIPEC will be furnished directly by that Center (see 24-205.1(a)). Funding data for termination inventory shall not be cited since costs for such inventory are included in the contractor's settlement proposal.

24-205.8 *Procedures for Automatic Data Processing Equipment (ADPE).*

(a) Those items of ADPE as defined in 1-201.29 (regardless of FSC) which are Government-owned or which are leased by the contractor under terms which provide to the Government an option to purchase or other residual interests (including the right to use until expiration of the lease) will be reported to the Defense Logistics Agency, ATTN: Defense ADP Resource Office (DARO), Cameron Station, Alexandria, VA 22314, on Standard Form 120, "Report of Excess Personal Property" (original and four copies). Normally the time required for acquisition studies required to select replacement equipment makes it possible to project the anticipated release date 180 days before the equipment is available for transfer. ADPE should be reported as soon as it is possible to project the release date. The following minimum reporting schedule shall, however, apply.

(1) Government-owned ADPE will be reported upon receipt of notice of complete termination or when it is determined that the property will no longer be needed on the contract. The release date assigned will be the last day of the plant clearance period or 90 days after the property becomes inactive. In the event of changes in release date, revised reports will be submitted.

(2) Leased ADPE, the total cost of which is charged to one or more cost-reimbursement type contracts, will be reported when it is determined that the property will no longer be needed on the contracts, or a major portion thereof. To preclude unnecessary lease costs, the release date established shall not extend ADPE on rental beyond the date it can be released to the lessor. Prompt reporting of leased ADPE is necessary in order to afford an opportunity to reutilize the property and protect the Government's equity.

(b) With respect to leased equipment, the total cost of which is charged to one or more cost-reimbursement type contracts, a quotation shall be requested from the lessor projecting the reduced price at which the equipment may be purchased based on accumulated rental credits through the anticipated release

date. A copy of this quotation should be attached to the Standard Form 120, but submission of the Standard Form 120 should not be delayed pending receipt of this information. If it is not available at that time, it should be provided when received.

(c) The following information will be reported on Standard Form 120:

(i) a complete list of each equipment item, identified by manufacturer's series and model number, and modifications and attachments applied to each component, including identification number if Government-owned; indicate type of maintenance contract, contractor, and monthly cost;

(ii) a separate attachment, showing the time in service for each component, average utilization (hours per month) and average downtime per month for the 12-month period immediately preceding the report (if appropriate, a narrative description of any history of repeated equipment failure shall be included);

(iii) a list of compilers and other software packages (such as executive routines), engineering drawings and maintenance manuals available with the equipment; and

(iv) in the instances of a complete equipment configuration, information regarding power and air conditioning requirements.

(d) The Defense ADP Resource Office (DARO) shall control ADPE reported excess. Shipments shall be made upon receipt of requests approved by DARO.

24-206 Sale of Surplus Contractor Inventory.

24-206.1 *General.*

(a) It is the Department of Defense policy that when surplus contractor inventory is to be disposed of by means of sale, such sale will be conducted by the contractor in possession in accordance with procedures provided in this Section. The contractor is required to use his best efforts to sell contractor inventory in the manner, at the times, to the extent, and at the prices approved by the plant clearance officer. The contractor is not required to extend credit to any purchaser.

(b) Surplus contractor inventory included in the contractor's inventory schedules which has not been utilized or donated under 24-205, or retained at cost pursuant to 24-202, shall be sold in accordance with 24-206.2 at any time after notification by the plant clearance officer that screening has been accomplished. Any such purchase, retention, or sale shall be subject to the approval of the plant clearance officer.

(c) *Description of Property.* Description of property must be adequate for identification by prospective bidders. Accuracy is essential and commercial terminology desirable. The original manufacturer and brand name shall be included, if appropriate. When property is boxed or packaged, information as to type of packaging shall be included.

(d) *Condition.* Condition shall be stated as "used" or "unused" and shall not be described as new. If unused property is still in manufacturer's original containers, a statement to that effect shall be included. Appropriate qualifying statements shall supplement the basic noun description, *i.e.*, "well preserved," "some surface rust," "repairs required," etc. Condition codes shall not be used. Because

E-610.7 *Assignments — Provision Against Set-Off — Limitations.* When a contract contains a clause permitting assignment, with provision against reduction or set-off as set out in the last sentence of paragraph (a) of the clause in 7-103.8, and the contractor's claims under the contract have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, and the assignment has not been released by the assignee, the effect to the statute mentioned is ordinarily to prevent application of payments due under the assigned contract to liquidate or reduce indebtedness of the contractor to the Government arising independently of the assigned contract. However, it is sometimes proper to effect collection despite such an assignment, as for example, when there is no loan outstanding in connection with the assignment and the arrangements between the contractor and the assignee are such that no loan is contemplated, or when there is no firm commitment for financing or when the amount of the loan secured and expected to be secured by the assignment pursuant to a firm commitment of the financing institution is less than the amount due and payable on the contract. Diligent effort should be made to ascertain the pertinent facts, from the assignee, the debtor, or otherwise. When appropriate, there should be withholding and application in reduction of the debt, to the extent that the assigned payments are not necessary to cover the loans or advances secured by the assignment, or to be secured incident to projected need for borrowings, and pursuant to a firm commitment of the financing institution. In doubtful cases the question as to the amount, if any, to be withheld should be referred to higher authority, or to the General Accounting Office when appropriate.

E-610.8 *Assignments — Absence of Provision Against Set-Off.* In some cases the contractor's claims have been assigned to a financing institution under the Assignment of Claims Act of 1940, as amended, but without the contract provision against reduction or setoff set out in paragraph (a) of the clause in 7-103.8, or equivalent provision. In such cases despite the assignment, net amounts due under the assigned contract should be withheld and applied to liquidate indebtedness of the contractor to the Government even though arising independently of the assigned contract, to the extent that such other indebtedness existed at the time written notice of the assignment was received by the Government, even though such debt was not matured so as to be due and payable at the time of such notice.

E-611 Transfer to Contract Financing Office. Transfer of the debt case will be made to the contract financing office (i) upon receipt of a contractor's deferment request or (ii) upon the expiration of 45 days without full collection after the date of initial demand whether or not postponement has been requested. Debt cases under contracts terminated for default shall be transferred to the contract financing office of the Procuring Department (E-212). Debt cases transferred to the contract financing office of the Procuring Department under contracts terminated for default shall not include that portion of a debt related to actions where a disbursing officer has primary responsibility (E-602). All debt cases where the disbursing officer has primary responsibility shall be transferred to the contract financing office of the disbursing office's Department. Other types of debt cases shall be transferred to the contract financing office or other office of the Department which first determines an amount to be due in accordance with the regulations of that Department.

Deferment requests will be forwarded as soon as possible to the contract financing office of the Department concerned. Such requests shall be supported by adequate identifying and explanatory information, including relevant

memoranda and correspondence, accounting data, amounts and dates of any collections, name and location of disbursing office and if applicable the assignee, date of filing of appeal, information on hand concerning financial condition of the contractor, and recommendations for action on the deferment request. For those debt cases transferred upon expiration of 45 days without full collection action, minimum supporting information and documentation will be provided in accordance with E-603.3.

E-611.1 *Small Amounts.* The transfers required by E-611 above, will not be made for amounts less than $200.00. However, it is incumbent on contracting officers and disbursing officers to effect collection whenever and by such means as are practicable. (See E-603.)

E-612 Deferment Request Data — Appeal Pending. The information to support a request for deferment of payment when the debt is disputed and timely appeal has been filed pursuant to the "Disputes" clause may be confined to material sufficient to provide understanding of the contractor's financial condition.

E-613 Deferment Request Data — No Appeal Pending. The information to support a request for deferment of payment when there is no appeal pending pursuant to the "Disputes" clause should be sufficient to provide understanding of the contractor's financial condition, and should also cover the contractor's contract backlog, projected cash receipts and requirements, the feasibility of immediate payment, and the probable effect of enforcement of full immediate payment on the contractor's operations.

E-614 Deferment Standards — Appeals. Appeals by contractors will not suspend or delay collection action. However, pending the resolution of appeals, deferments will be governed exclusively by the special standards set out in this paragraph E-614. In order to minimize the possibility of overcollections, requested deferments pending the outcome of appeals may be granted by the contract financing office (E-212), when the contractor enters into agreement acceptable to the contract financing office as reasonably assuring diligent prosecution of the appeal and full payment of any amount determined due upon decision of the appeal or upon further negotiations without such decision, with interest on such amount at the rate and for the period mentioned in E-608(2) above. Agreement on interest may include the adjustment provisions authorized by E-618, below. Collateral security, or other provisions to assure payment, shall be consistent with the circumstances of each case. To avoid possible undue hardship to small business concerns or those contractors who are financially weak, deferments pending the outcome of appeals may be granted on such terms and conditions as may be deemed reasonable by the contract financing office, notwithstanding financial weakness of the contractor and notwithstanding its inability to furnish good collateral security. These deferments shall provide for termination of the deferment by the contract financing office upon violation of the agreement or upon failure of the contractor diligently to pursue its appeal.

E-615 Deferment Standards — No Appeal Pending. When appeal is not pending, or has been resolved, the contract financing office (E-212) may make arrangements for deferral of payments when the contractor cannot pay at once in full, or when full immediate collection would seriously impair the contractor's ability to continue operations or to perform contracts or subcontracts for the national defense. Such agreements shall include such covenants and security as may be prudent and feasible under the circumstances, shall be limited to the shortest

TABLE 1

STANDARD DISTRIBUTION

With Shipment * 4

Consignee (*via mail*) 2

(*For Navy procurement, copies will be priced*)
(For Grant Aid/Foreign Military Sales, consignee copies are not required).

Contract Administration Office 1

(Forward direct to address in Block 10 except when addressee is a DCASR, DCASD, or DCASO, and a Certificate of Conformance (see I-301, Block 21(c)A(4)) or the Alternate Release Procedures (see I-301, Block 21(c)A(2)) is involved, and acceptance is at origin; then, forward through the Authorized Government Representative.)

Purchasing Office 1

Payment Office ** 4

(Forward direct to addressee in Block 12 except (i) when addressee in Block 10 is a DCASR, DCASD, or DCASO and Payment Office in Block 12 is a DCASR do not make distribution; (ii) when addressee in Block 12 is HQ AFCMD attach only one copy to the required number of copies of the contractor's invoice; (iii) when acceptance is at destination and a Navy Finance Office will make payment, forward to destination; and (iv) when a Certificate of Conformance (see I-301, Block 21(c)A(4)) or the Alternative Release Procedures (see I-301, Block 21(c)A(2)) is involved and acceptance is at origin, forward the copies through the Authorized Government Representative.)

ADP Point for CAO (*Applicable to Air Force only*) 1

(When an AFPRO is specified as the administering activity in Block 10, or HQ AFCMD is cited as Payment Office in Block 12, send *one* copy to HQ AFCMD immediately upon signature. If submission of delivery data is being made by mechanical means, distribution of this hard copy need not be made to HQ AFCMD.)

*Attach as follows:

Type of Shipment	*Location*
Carload or truckload:	Affix to the shipment where it will be readily visible and available upon receipt.
Less-than-carload or truckload:	Affix to container number one, or container bearing lowest number.
Mail, including parcel post:	Attach to outside or include in the package. Include a copy in each additional package of multipackage shipments.
Pipeline or tank car:	Forward with consignee copies.

**Payment by DCASRs will be based on the source acceptance copies of DD Forms 250 forwarded to the Contract Administration Office except in those rare instances where distribution will be made to DCASR Payment Offices in accordance with the above distribution schedule.

MATERIAL INSPECTION AND RECEIVING REPORT

TABLE 2

SPECIAL DISTRIBUTION

As Required	*Address*	*Number of Copies*
Each: Navy Status Control Activity, Army, Air Force, DSA Inventory Control Manager.	Address specified in the contract.	1 Each addressee
Quality Assurance Representative	Address specified by the assigned Quality Assurance Representative.	1
Transportation Office issuing GBL (attach to GBL memorandum copy).	CAO address unless otherwise specified in the contract.	1
Purchasing Office other than office issuing contract.	Address specified in the contract.	1
Foreign Military Sales Representative.	Address specified in the contract.	8
Military Assistance Advisory Group (Grant Aid Shipments).	U.S. Military Advisory Group, Military Attache, Mission, or other designated agency address as specified in the contract.	1
Army Foreign Military Sales/ Military Assistance Program (Grant Aid)	Commander US Army Security Assistance Center ATTN: DRSAC-OP 3rd Street and "M" Avenue, Bldg 54 New Cumberland Army Depot New Cumberland, PA 17070	1
Air Force On shipments of new production of aircraft and missiles, class 1410 missiles, 1510 aircraft (fixed wing, all types), 1520 aircraft (rotary wing), 1540 gliders, 1550 target drones.	Air Force Logistics Command Aerospace Vehicle Distribution Office (MCNAPV) Wright-Patterson AFB, Ohio 45433	1
When above items are delivered to aircraft modification centers.	A. F. Plant Representative Office	1
Foreign Military Sales/ Military Assistance Program (Grant Aid) shipments to Canada.	National Defence Headquarters Ottawa, Ontario Canada K1A OK4 Attn: DPSUPS3	1
Other Than Canada	Address specified in the contract.	1

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